

6-17-2014

## State v. Lankford Clerk's Record v. 3 Dckt. 35617

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FILED IN CASE NO. 1884

Vol. 3 of 21

IN THE 1884  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

State of Idaho

Plaintiff and  
**HORTON** Respondent  
VS.

Mark N. Hankford

Defendant and  
Appellant

Appealed from the District Court of the Second  
Judicial District for the State of Idaho, in and

for Idaho County

Hon. James T. Judd District Judge

State Appellate Public  
Defender

Attorney ✓ for Appellant

Attorney General's  
Office

**FILED COPY**  
Attorney ✓ for Respondent

Filed this \_\_\_\_\_ day of JUN 17 2014 \_\_\_\_\_ 20

Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by \_\_\_\_\_

By \_\_\_\_\_ Clerk  
Deputy

**C35617**

IN THE SUPREME COURT OF THE STATE OF IDAHO

State of Idaho,  
Plaintiff/Respondent

vs.

SUPREME COURT  
NO. CR 35617

Mark Henry Lankford,  
Defendant/Appellant.

\*\*\*\*\*

CLERK'S RECORD ON APPEAL

\*\*\*\*\*

Appeal from the District Court of the Second Judicial District  
of the State of Idaho, in and for the County of Idaho.

HONORABLE James F. Judd

\*\*\*\*\*

State Appellate Public Defender  
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Boise, ID 83703

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Boise, ID 83720-0010

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AUG 27 2008

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kathy Johnson* DEPUTY

DOCKETED

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*Attorney for Defendant/Appellant*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	Case No. CR-1983-20158
	)	
Plaintiff/Respondent,	)	MOTION TO APPOINT STATE
	)	APPELLATE PUBLIC DEFENDER
vs.	)	ON DIRECT APPEAL
	)	
MARK H. LANKFORD,	)	
	)	
Defendant/Appellant.	)	
	)	

COMES NOW the above-named Defendant/Appellant, MARK H. LANKFORD, by and  
through his counsel of record, Jonathon D. Hallin, and hereby requests that this Honorable Court  
MOTION TO APPOINT STATE APPELLATE PUBLIC DEFENDER ON DIRECT APPEAL -  
Page 1

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 11:13 O'CLOCK A.M.

AUG 28 2008

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

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*Attorney for Defendant/Appellant*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	Case No. CR-1983-20158
	)	
Plaintiff/Respondent,	)	<b>ORDER APPOINTING STATE</b>
	)	<b>APPELLATE PUBLIC DEFENDER</b>
vs.	)	<b>ON DIRECT APPEAL</b>
	)	
MARK H. LANKFORD,	)	
	)	
Defendant/Appellant.	)	
	)	

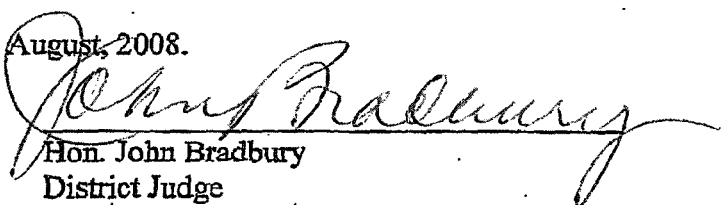
ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER ON DIRECT APPEAL -  
Page 1

IT APPEARING that the above-named Defendant, MARK H. LANKFORD, having previously been declared a "needy person" pursuant to I.C. § 19-851, has heretofore been represented by Charles E. Kavis and Jonathon D. Hallin, court appointed counsel.

IT FURTHER APPEARING that the Defendant has elected to pursue a direct appeal in this matter, and thus entitled to the services of the State Appellate Public Defender's Office.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, AND THIS DOES ORDER, that the Idaho State Appellate Public Defender is appointed to represent the above-named Defendant, MARK H. LANKFORD, in all matters pertaining to the direct appeal filed herein.

SO ORDERED THIS 27 day August, 2008.

  
Hon. John Bradbury  
District Judge



ORIGINAL

Inmate name MARK HENRY LANKFORD  
IDOC No. 20489  
Address MSI A-BLOCK PO BOX 51  
BOISE IDAHO 83707-0051

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:39 O'CLOCK P.M.

NOV 21 2008

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
Kathy Johnson DEPUTY

Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD

Defendant.

Case No. CR 83-20158

**MOTION FOR  
CORRECTION OR  
REDUCTION OF  
SENTENCE, ICR 35**

COMES NOW, MARK H. LANKFORD, Defendant in the instant action, and pursuant  
to Idaho Criminal Rule 35, moves this Honorable Court for its Order:

☒ Correcting the Defendant's illegal sentence, or

☐ Reducing Defendant's sentence for the reasons stated on page two of this motion:

1. The Defendant was convicted of 1<sup>st</sup> DEGREE MURDER before the Honorable  
Judge JOHN BRADBURY and sentenced to a term of imprisonment in  
the custody of the Idaho Department of Correction for:

☐ a unified term of \_\_\_\_ years including \_\_\_\_ years fixed followed by \_\_\_\_ years  
indeterminate,

☐ a fixed term of LIFE years.

2. The Defendant has been incarcerated since 2 OCTOBER 1983\* and has served  
25 YEARS / 1 1/2 MONTHS\* (months/years) of the sentence.  
(17 JULY 2008)  
(4 MONTHS)

MOTION FOR REDUCTION OR CORRECTION OF SENTENCE, ICR 35 - 1

Revised: 10/06/05

(\* ORIGINAL ILLEGAL CONVICTION)

3. The Defendant believes:

[ ] The Court should reconsider its earlier sentence and reduce the same on the following grounds, or,

☒ The sentence is illegal and should be changed on the following grounds:

(State the reasons why you believe your sentence should be reduced. You may add extra pages if necessary. Any additional documentation must be attached hereto.)

- A. DENIAL OF CONSTITUTIONAL RIGHT TO SELF-REPRESENTATION. (VIOLATED I.C. §19-857; 6<sup>th</sup> AND 14<sup>th</sup> AMENDMENTS - U.S. CONSTITUTION.)
- B. PERJURY BY LEE JOHN LANKFORD AT SENTENCING. HE LIED ABOUT WHAT HE ALLEGED I SAID, WHICH WAS TAKEN VERBATIM FROM AN OLD LIE BY BRYAN S. LANKFORD. THIS WAS GIVEN TO HIM BY THE PROSECUTOR OR BRYAN, CONSTITUTING SUBORNATION OF PERJURY, IN VIOLATION OF I.C. §18-5410.
- C. MISCONDUCT BY PROSECUTOR; LYING TO COURT, CONCERNING MY RECORD; USING MY GRANDMOTHERS TESTIMONY WHILE GIVING NO SHOWING OF PROOF THAT SHE IS DECEASED.
- D. ALLOWED NON-IMMEDIATE FAMILY MEMBERS TO TESTIFY, VIOLATING §19-5306(3) WHICH ALSO APPLIES TO THE LEGALLY INADEQUATE P.S.I.
- LCITE - IDAHO V. PAYNE I.S.C. 28589 FILED JUNE 18, 2008

Defendant additionally submits the following documentation for consideration:

AS RECORD HAS YET TO BE SETTLED  
AND I HAVE NEITHER TRANSCRIPT NOR  
ATTORNEY, NO DOCUMENTS ARE AVAILABLE.

WHEREFORE, the Defendant, MARK H. LANKFORD, respectfully prays

this Honorable Court to reduce or correct the sentence as follows:

LIFE WITH PAROLE, TWO COUNTS RUNNING  
CONCURRENTLY WITH RECOMMENDATION OF COURT  
FOR IMMEDIATE OUT-OF-STATE PAROLE or grant such

other and further relief, as the Court deems appropriate.

Respectfully submitted this 18<sup>th</sup> day of NOVEMBER, 2008

Mark H. Lankford  
Defendant

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 18<sup>th</sup> day of NOVEMBER, 2008, I  
delivered to prison authorities for the purpose of mailing a true and correct copy of the MOTION  
FOR REDUCTION OF CORRECTION OF SENTENCE, ICR 35 via prison mail system for  
processing to the U.S. mail system to:

IDAHO County Prosecuting Attorney

PO BOX 463

GRANGEVILLE IDAHO 83530

Mark H. Lankford  
Defendant

Inmate name MARK HENRY LANKFORD  
IDOC No. 20489  
Address MSI A-BLOCK PO BOX 51  
BOISE IDAHO 83707-0051

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:59 O'CLOCK P. M.

NOV 21 2008

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
HARRY JOHNSON DEPUTY

Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD  
Defendant.

Case No. CR 83-20158

**MOTION FOR HEARING**

COMES NOW, MARK HENRY LANKFORD, Defendant, in the above  
entitled matter and moves this Honorable Court to grant Defendant's Motion for Hearing so that  
information and oral argument can be presented in support of the Idaho Criminal Rule 35 motion  
for a reduction of sentence.

WHEREFORE, Defendant respectfully prays that this Honorable Court issue it's Order  
granting Defendant's Motion for Hearing.

DATED this 18<sup>th</sup> day of NOVEMBER, 2008.

[Signature]  
Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18<sup>th</sup> day of November, 2008, I delivered to prison authorities for the purpose of mailing a true and correct copy of the MOTION FOR HEARING via prison mail system for process to the U.S. mail system to:

SDAHO

County Prosecuting Attorney

PO BOX 463

GRANVILLE SDAHO 83530

[Signature]  
Defendant

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:51 O'CLOCK P.M.

DEC - 3 2008

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

Inmate name MARK HENRY LANKFORD  
IDOC No. 20489  
Address MSI A-BLOCK PO BOX 51  
BOISE IDAHO 83707-0051

DOCKETED

Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD  
Defendant.

Case No. CR 83-20158

ORDER GRANTING  
MOTION FOR HEARING  
AND NOTICE OF  
HEARING

IT IS HEARBY ORDERED that the Defendant's Motion for Hearing is granted so that information and oral argument can be presented in support of the Idaho Criminal Rule 35 motion for a reduction of sentence. A hearing will be held at Drangville (location) on the 22 day of January, 2009 at 3:00pm (time) pat (time zone). The hearing will be held ✓ in person/     by telephone. If by telephone the Court will initiate the phone call at a phone number provided by the IDOC paralegal.

DATED this 3 day of December, 2008

Jan Brabury  
District Judge



# RESOURCE CENTER PRIVILEGED MAIL LOG

LANKFORD

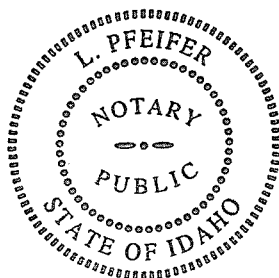
20489


<i>Date Received</i>	<i>Date Mailed</i>	<i>Addressee</i>
11/18/08	11/18/08	Idaho County Prosecuting Attorney PO Box 463  Grangeville ID
11/18/08	11/18/08	Idaho County District Court Second Judicial District Idaho County Courthouse Grangeville ID

State of Idaho

County of Ada

On this 18<sup>th</sup> day of November, 2008, I certify the above is a true, exact, and complete copy of the Resource Center's entry into the privileged mail database.



  
NOTARY PUBLIC for Idaho  
Commission Expires: 05/11/2012

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:42 O'CLOCK P.M.

DEC - 4 2008

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Rose E. Gehring* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  Plaintiff,  vs.  Mark H. Lankford  Defendant.	Case No. CR 83-20158   ORDER FOR TRANSPORT AND RETURN
--	---

The defendant is currently incarcerated at the I.M.S.I., Boise, Idaho;

IT IS HEREBY ORDERED that the Idaho Department of Corrections shall cause the above named defendant to be returned to Court for further proceedings on Thursday, January 22, 2009, at the hour of 3:00 p.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 4 day of December 2008.

*John Bradbury*  
JOHN BRADBURY  
District Judge

ORDER FOR TRANSPORT AND RETURN - 1

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 12.4.08 to:

Inmate Placement, fax 327-7444  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
Charles Kovic, via mail  
Kirk MacGregor, court tray  
Mark Lankford, via mail

ROSE E. GEHRING, Clerk of Court

by Kathy Johnson  
Kathy Johnson, Deputy Clerk

ORDER FOR TRANSPORT AND RETURN - 2

IDAHO COUNTY DISTRICT COURT  
AT 2:41 FILED P.M.  
O'CLOCK

DOCKETED

DEC - 5 2008

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

IDAHO COUNTY  
PROSECUTING ATTORNEY'S OFFICE  
416 W. MAIN  
PO Box 463  
GRANGEVILLE, ID 83530  
PHONE: (208) 983-0166  
FAX: (208) 983-3919

KIRK A. MACGREGOR - PROSECUTING ATTORNEY  
DENNIS L. ALBERS - DEPUTY PROSECUTING ATTORNEY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR 83- 20158

MOTION TO DISMISS DEFENDANT'S  
MOTION FOR CORRECTION OR  
REDUCTION OF SENTENCE, ICR 35

COMES NOW, Idaho County Prosecuting Attorney, KIRK A. MacGREGOR, and hereby moves this honorable court to dismiss the Motion For Correction or Reduction of Sentence, ICR 35 filed by the defendant. Idaho Criminal Rule 35 states that motions to correct or modify sentences under this rule must be filed within 120 days of the entry of the judgment imposing sentence. The Judgment of Conviction in this case was filed on July 22, 2008. The defendant filed his motion on November 21, 2008. This is a total of 121 days. Therefore, the defendant's Motion for Correction or Reduction of Sentence, ICR 35, is outside the legal time limit for the filing of a motion under Idaho Criminal Rule 35. Consequently this court is without jurisdiction to hear the defendant's Motion.

Based upon all of the above it is respectfully requested that the Court dismiss the defendant's Motion For Correction or Reduction of Sentence, ICR 35.

Oral argument is not requested unless the Court deems necessary.

DATED this 5 day of DEC., 2008.

IDAHO COUNTY PROSECUTING  
ATTORNEY'S OFFICE

By: [Signature]  
Kirk A. MacGregor, ISB #3880  
Idaho County Prosecuting Attorney

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following person(s) in the manner indicated below on the 5 day of December, 2008.

Mark Henry Lankford  
#20489  
IMSI A-Block PO Box 51  
Boise, ID 83707-0051

X US Mail

Jonathon Hallin  
Attorney at Law  
PO Box 1067  
McCall, ID 83638  
#208-634-5880

X US Mail  
X Fax

Chuck Kovis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843  
FAX #: 208-882-5379

X US Mail  
X Fax

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:30 O'CLOCK P.M.

DEC 12 2008

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  Plaintiff,  vs.  Mark H. Lankford  Defendant.	Case No. 83-20158  AMENDED ORDER FOR TRANSPORT AND RETURN
--	---

The defendant is currently incarcerated at the I.M.S.I., Boise, Idaho;

IT IS HEREBY ORDERED that the Idaho Department of Corrections shall cause the above named defendant to be returned to Court for further proceedings on Thursday, January 22, 2009, at the hour of 3:00 p.m. in the District Courtroom of the Idaho County Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the IDOC shall take the above-named defendant to I.C.I.O. in Orofino, Idaho for housing. Idaho County Sheriff's Department will pick up the defendant from that facility and return him there.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court. Idaho Department

ORDER FOR TRANSPORT AND RETURN - 1



of Corrections has transport the above-named defendant on his return to I.M.S.I. in Boise, Idaho.

Dated this 17 day of December 2008.




JOHN BRADBURY  
District Judge

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 12.15.08 to:

Inmate Placement, fax 327-7444  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray

ROSE E. GEHRING, Clerk of Court

by   
Kathy Johnson, Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
AT 4:47 FILED P.M.  
O'CLOCK

JAN 22 2009

DOCKETED

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
Kathy Johnson DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

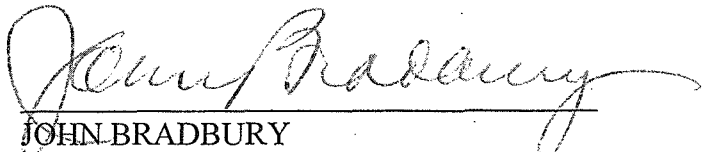
STATE OF IDAHO,  Plaintiff,  vs.  Mark H. Lankford  Defendant.	Case No. CR 83-20158  ORDER FOR TRANSPORT AND RETURN
--	---

The defendant is currently incarcerated at the I.C.I.O., Orofino, Idaho;

IT IS HEREBY ORDERED that the Idaho Sheriff's Department shall cause the above named defendant to be returned to Court for further proceedings on Thursday, January 29, 2009, at the hour of 10:30 a.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 22 day of January 2009.

  
JOHN BRADBURY  
District Judge

ORDER FOR TRANSPORT AND RETURN - 1

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 1.22.07 to:

Inmate Placement, fax 327-7444  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O., faxed 476-4050

ROSE E. GEHRING, Clerk of Court

by Kathy Johnson  
Kathy Johnson, Deputy Clerk


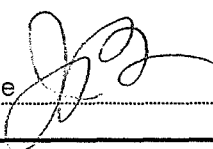
ORDER FOR TRANSPORT AND RETURN - 2

# LOG OF PROCEEDINGS ELECTRONICALLY RECORDED

**Description** St-vs-Lankford  
CR 83-20158  
Motion  
Prosecutor: Kirk MacGregor  
Defense: Charles Kavis/J.D. Hallin  
D64  
Court Reporter: Keith Evans  
Presiding Judge: John Bradbury

**Date** 1/22/2009

**Location** DISTRICTCOURTW2

Time	Speaker	Note
02:59 PM		Court announces case
02:59 PM		defendant present with counsel
03:00 PM		MacGregor argues in opposition re: timeliness of motion
03:02 PM		Kavis argues in reponse
03:02 PM		Court orders to hear Rule 35 motion
03:03 PM		MacGregor argues in opposition/response
03:03 PM		Kavis addresses court
03:03 PM		Court addresses defendant
03:04 PM		Lankford addresses court
03:04 PM		Kavis moves to continue hearing
03:05 PM		Court discusses with defendant and counsel - defendant to be held in Orofino until next hearing
03:06 PM		defendant needs legal documents/glasses
03:06 PM		reset for 1/29/09 at 10:30
03:07 PM		MacGregor offer no objection to conitnuance
03:07 PM		Recess
03:07 PM		 Deputy Court Clerk   District Judge

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:03 O'CLOCK P.M.

JAN 29 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

SOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO


STATE OF IDAHO,  Plaintiff,  vs.  Mark H. Lankford  Defendant.	Case No. CR 83-20158  AMENDED ORDER FOR TRANSPORT AND RETURN
--	--

The defendant is currently incarcerated at the I.C.I.O., Orofino, Idaho;

IT IS HEREBY ORDERED that the Idaho County Sheriff's Department shall cause the above named defendant to be returned to Court for further proceedings on Thursday, February 12, 2009, at the hour of 1:00 p.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 27 day of January 2009.

  
JOHN BRADBURY  
District Judge

ORDER FOR TRANSPORT AND RETURN - 1

CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 1-29-09 to:

Inmate Placement, fax 327-7444  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O., faxed 476-4050


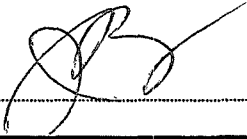
ROSE E. GEHRING, Clerk of Court

by Kathy Johnson  
Kathy Johnson, Deputy Clerk

ORDER FOR TRANSPORT AND RETURN - 2

# LOG OF PROCEEDINGS ELECTRONICALLY RECORDED

<b>Description</b>		St-vs-Lankford CR 83-20158 Oral Argument Prosecutor: Kirk MacGregor Defense: Chuck Kovis/JD Hallin D65 Court Reporter: Keith Evans Presiding Judge: John Bradbury
<b>Date</b>	2 /12/2009	<b>Location</b> DISTRICTCOURTW2
<b>Time</b>	<b>Speaker</b>	<b>Note</b>
01:00 PM		Court announces case
01:00 PM		defendant present with counsel
01:00 PM		Court addresses counsel re: motion to dismiss, court will hear all aspects of petition regardless of untimeliness
01:01 PM		Kovis argues in support of motion
01:03 PM		Court responds and discusses with counsel
01:04 PM		Kovis responds
01:05 PM		Court responds
01:05 PM		kovis continues
01:06 PM		Court responds
01:07 PM		Lankford addresses court
01:07 PM		Court responds
01:08 PM		Lankford addresses court further
01:09 PM		Court responds
01:10 PM		Lankford continues addresses to court in support
01:10 PM		Court responds
01:11 PM		MacGregor argues to dismiss
01:11 PM		Court responds
01:12 PM		MacGregor argues further re: Rule 35
01:14 PM		Court responds and discusses with counsel
01:17 PM		Court grants MacGregor 10 days to file Memorandum, Kovis 10 days to reply after
01:19 PM		MacGregor continues argument
01:19 PM		Court responds
01:21 PM		MacGregor continues
01:21 PM		Court responds
01:21 PM		MacGregor continues argument
01:22 PM		Court responds
01:22 PM		Kovis concurs
01:22 PM		MacGregor continues and will prepare memorandum
01:22 PM		Lankford argues in rebuttal
01:24 PM		Court responds
01:25 PM		Court takes matter under advisement
01:25 PM		Kovis addresses court re: motion for new trial

01:26 PM		Kovis requests date set and briefing schedule
01:26 PM		Kovis to file brief within 30 days, State 30 days to respond, Kovis reply brief 15 days later
01:26 PM		Kovis recommends housing defnedant in Orofino until case is done
01:27 PM		MacGregor addresses corut re: motion to dismiss motion to dismiss
01:27 PM		Recess
01:27 PM		 Deputy Court Clerk
		District Judge 



FEB 23 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

IDAHO COUNTY  
PROSECUTING ATTORNEY'S OFFICE  
416 W. MAIN  
PO BOX 463  
GRANGEVILLE, ID 83530  
PHONE: (208) 983-0166  
FAX: (208) 983-3919

KIRK A. MACGREGOR - PROSECUTING ATTORNEY  
ADAM H. GREEN - DEPUTY PROSECUTING ATTORNEY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR 1983-20158

MOTION FOR EXTENSION OF  
TIME

COMES NOW, the State of Idaho, by and through its attorney of record, KIRK A. MacGREGOR, and hereby moves this Court for an extension of time to file the State's memorandum or brief regarding the defendant's Rule 35 motion. On February 12, 2009, the Court had granted the State and the defense ten (10) days to prepare any memorandums or briefs they desired in regards to the defendant's Rule 35 motion. Your movant has recently had an unusually large number of civil cases and issues relating to his duties as Idaho County Prosecutor. Wherefore, it is respectfully requested that an additional ten (10) days be granted from the date of this motion for any memorandum or brief to be filed by the State or the defense.

Oral argument is not requested unless the court deems it necessary.

DATED this 23 day of February, 2009.

IDAHO COUNTY PROSECUTING  
ATTORNEY'S OFFICE

By :

Kirk A. MacGregor, ISB #3880  
Idaho County Prosecuting Attorney

CERTIFICATE OF SERVICE

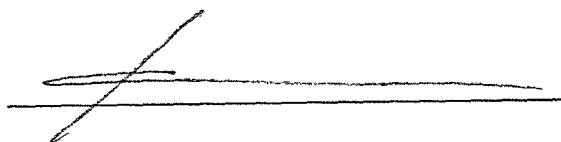
The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following person(s) in the manner indicated below on the 28 day of February, 2009:

Jonathon Hallin  
FAX #208-634-5880  
Attorney at Law  
PO Box 1067  
McCall, ID 83638

☐ Courthouse Tray  
☒ US Mail  
☒ Fax

Chuck Kovis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843  
FAX #: 208-882-5379

☐ Courthouse Tray  
☐ Hand Delivered  
☒ US Mail  
☒ Fax



IDAHO COUNTY DISTRICT COURT  
FILED  
AT 5:00 O'CLOCK P.M.

FEB 25 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

IDAHO COUNTY  
PROSECUTING ATTORNEY'S OFFICE  
416 W. MAIN  
PO BOX 463  
GRANGEVILLE, ID 83530  
PHONE: (208) 983-0166  
FAX: (208) 983-3919

KIRK A. MACGREGOR - PROSECUTING ATTORNEY  
ADAM H. GREEN - DEPUTY PROSECUTING ATTORNEY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

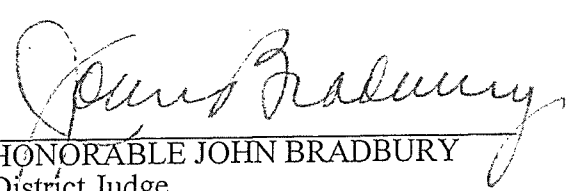
Case No. CR 1983-20158

ORDER EXTENDING  
TIME

After reading and filing the State's Motion For Extension of Time to file the State's memorandum or brief regarding the defendant's Rule 35 motion, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional ten (10) days is granted from the date of this order for the filing of any memorandum or brief by the State or the defense concerning the defendant's Rule 35 motion.

DATED this 15 day of February, 2009.

  
HONORABLE JOHN BRADBURY  
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following person(s) in the manner indicated below on the 25th day of February, 2009:

Jonathon Hallin  
FAX #208-634-5880  
Attorney at Law  
PO Box 1067  
McCall, ID 83638

☐ Courthouse Tray  
☒ US Mail  
☐ Fax

Chuck Kovis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843  
FAX #: 208-882-5379

☐ Courthouse Tray  
☐ Hand Delivered  
☒ US Mail  
☐ Fax

Kirk MacGregor

☐ Courthouse Tray

ROSE E. GEHRING

BY:

Kathy Johnson  
Deputy - Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 5:00 O'CLOCK P.M.

FEB 25 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kelly Johnson* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

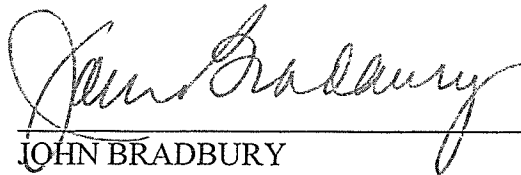
STATE OF IDAHO,  Plaintiff,  vs.  Mark H. Lankford  Defendant.	Case No. 83-20158   ORDER FOR TRANSPORT AND RETURN
--	--

The defendant is currently incarcerated at the I.C.I.O., Orofino, Idaho;

IT IS HEREBY ORDERED that the Idaho County Sheriff's Department shall cause the above named defendant to be returned to Court for further proceedings on Thursday, May 14, 2009, at the hour of 2:00 p.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 25 day of February 2009.

  
\_\_\_\_\_  
JOHN BRADBURY  
District Judge

ORDER FOR TRANSPORT AND RETURN - 1

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 2.25.09 to:

Inmate Placement, fax 327-7444  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O. faxed 476-4050

ROSE E. GEHRING, Clerk of Court

by Kathy Johnson  
Kathy Johnson, Deputy Clerk

ORDER FOR TRANSPORT AND RETURN - 2

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:40 O'CLOCK P.M.

MAR 12 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTYIDAHO COUNTY  
PROSECUTING ATTORNEY'S OFFICE  
416 W. MAIN  
PO BOX 463  
GRANGEVILLE, ID 83530  
PHONE: (208) 983-0166  
FAX: (208) 983-3919KIRK A. MACGREGOR - PROSECUTING ATTORNEY  
ADAM H. GREEN - DEPUTY PROSECUTING ATTORNEYIN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR 1983-20158

MOTION FOR EXTENSION OF  
TIME

COMES NOW, the State of Idaho, by and through its attorney of record, KIRK A. MacGREGOR, and hereby moves this Court for an extension of time to file the State's memorandum or brief regarding the defendant's Rule 35 motion. On February 12, 2009, the Court had granted the State and the defense ten (10) days to prepare any memorandums or briefs they desired in regards to the defendant's Rule 35 motion. That the Court granted the State an additional ten (10) days to prepare said memorandum or brief.

That your movant has had an unusually large number of civil cases and issues relating to his duties as Idaho County Prosecutor. Wherefore, it is respectfully requested that an additional ten (10) days be granted from the date of this motion for any memorandum or brief to be filed by the State or the defense.

Oral argument is not requested unless the court deems it necessary.

MOTION FOR EXTENSION OF TIME - 1

1 DATED this \_\_\_\_ day of March, 2009.

2 IDAHO COUNTY PROSECUTING  
3 ATTORNEY'S OFFICE

4 By :

Kirk A. MacGregor, ISB #3880  
Idaho County Prosecuting Attorney

5 CERTIFICATE OF SERVICE

6 The undersigned hereby certifies that a true and correct copy of the foregoing document was  
7 served upon the following person(s) in the manner indicated below on the \_\_\_\_ day of March, 2009:

8 Jonathon Hallin  
9 FAX #208-634-5880  
10 Attorney at Law  
11 PO Box 1067  
12 McCall, ID 83638

\_\_\_\_ Courthouse Tray  
X US Mail  
X Fax

11 Chuck Kovis  
12 Attorney at Law  
13 PO Box 9292  
14 Moscow, ID 83843  
15 FAX #: 208-882-5379

\_\_\_\_ Courthouse Tray  
\_\_\_\_ Hand Delivered  
X US Mail  
X Fax



Charles E. Kovis  
312 S. Washington  
Post Office Box 9292  
Moscow, Idaho 83843  
Telephone: (208) 882-3939  
Fax: (208) 882-5379  
Idaho State Bar # 4700

JONATHON D. HALLIN  
WILCOX AND HALLIN, PLLC  
Attorneys At Law  
200 Park Street  
P.O. Box 947  
McCall, Idaho 83638  
Telephone: (208) 634-7118  
Facsimile: (208) 634-5880  
[wilcox.hallin@frontier.net](mailto:wilcox.hallin@frontier.net)  
Idaho State Bar #7253

Attorneys for Defendant

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:56 O'CLOCK P.M.

MAR 12 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Rose E. Gehring* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

CASE NO. CR-83-20158

MOTION FOR MORE TIME  
TO FILE MEMORANDUM

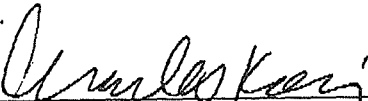
COMES NOW, the Defendant, Mark H. Lankford, by and through his counsel of record,  
and moves this Court for a ten (10) day continuance to file his memorandum in support of his

MOTION FOR MORE TIME TO  
FILE MEMORANDUM

motion for a new trial.

This motion is made upon the grounds that counsel is still trying to obtain an affidavit that should be procured within the next ten days.


DATED this 12<sup>th</sup> day of March, 2009.

  
CHARLES E. KOVIS  
An Attorney for Mark H. Lankford

#### CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of March, 2009, a true and correct copy of this *Motion for New Trial* was faxed to:

KIRK A. MacGREGOR & DENNIS ALBERS  
IDAHO COUNTY PROSECUTOR'S OFFICE  
416 W. MAIN  
P.O. BOX 463  
GRANGEVILLE, ID 83530  
Via Facsimile: (208) 983-3919  
Via Facsimile: (208) 983-1401

  
Charles F. Kovis, Attorney for Defendant

DOCKETED

IDAHO COUNTY  
PROSECUTING ATTORNEY'S OFFICE  
416 W. MAIN  
PO BOX 463  
GRANGEVILLE, ID 83530  
PHONE: (208) 983-0166  
FAX: (208) 983-3919

KIRK A. MACGREGOR - PROSECUTING ATTORNEY  
ADAM H. GREEN - DEPUTY PROSECUTING ATTORNEY

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 5:00 O'CLOCK P.M.

MAR 12 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

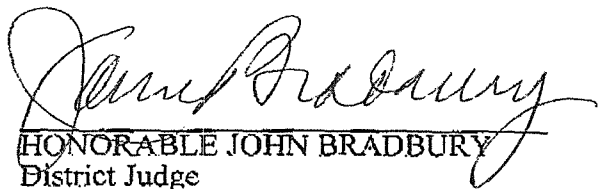
Case No. CR 1983-20158

ORDER EXTENDING  
TIME

After reading and filing the State's Motion For Extension of Time to file the State's memorandum or brief regarding the defendant's Rule 35 motion, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional ten (10) days is granted from the date of this order for the filing of any memorandum or brief by the State or the defense concerning the defendant's Rule 35 motion.

DATED this 12 day of March, 2009.

  
HONORABLE JOHN BRADBURY  
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following person(s) in the manner indicated below on the 13<sup>th</sup> day of March, 2009:

Jonathon Hallin  
FAX #208-634-5880  
Attorney at Law  
PO Box 1067  
McCall, ID 83638

☒ Courthouse Tray  
☒ US Mail  
☐ Fax

Chuck Kovis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843  
FAX #: 208-882-5379

☐ Courthouse Tray  
☐ Hand Delivered  
☒ US Mail  
☐ Fax

Kirk MacGregor

☒ Courthouse Tray

ROSE E. GEHRING

BY: Kathy Johnson  
Deputy - Clerk

ORDER EXTENDING TIME - 2

Charles E. Kovis  
312 South Washington  
P.O. Box 9292  
Moscow, ID 83843  
Telephone: (208) 882-3939  
Fax: (208) 882-5379  
I.S.B.N. 4700

Jonathon D. Hallin  
Wilcox & Hallin, PLLC  
Attorneys at Law  
200 Park Street  
P.O. Box 947  
McCall, Idaho 83638  
Telephone: (208) 634-7118  
Facsimile: (208) 634-5880  
[wilcox.hallin@frontiernet.net](mailto:wilcox.hallin@frontiernet.net)  
ISB # 7253

Attorneys for Defendant

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 5:00 O'CLOCK P.M.

APR 01 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*[Signature]* DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	Case No. CR-1983-20158
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER EXTENDING</b>
	)	<b>TME</b>
	)	
MARK HENRY LANKFORD,	)	
	)	
Defendant.	)	
_____	)	


After reviewing the *Motion for More Time to File Memorandum* regarding the defendant's motion for new trial, and good cause appearing therefore,

**IT IS HEREBY ORDERED** that an additional ten (10) days is granted from the date of this order for the filing of any memorandum or brief by the defense concerning the defendant's motion for new trial.

ORDER EXTENDING TIME

IT IS FURTHER ORDERED that the Plaintiff shall have their reply brief filed with the District Court thirty (30) days after receiving the Defendant's brief.

DATED this 1 day of ~~March~~ <sup>April</sup> 2009.

  
HONORABLE JOHN BRADBURY  
District Judge

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of ~~March~~ <sup>April</sup>, 2009, true and correct copies of the foregoing *Order Extending Time* were served upon the following person(s) in the manner indicated below:

CHARLES E KOVIS  
ATTORNEY AT LAW  
P O BOX 9292  
MOSCOW ID 83843  
FAX #: 208-882-5379

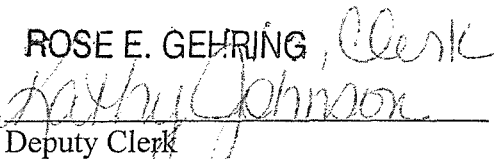
☐ Courthouse Tray  
☒ US Mail  
☐ Fax

KIRK MacGREGOR  
IDAHO COUNTY PROSECUTOR  
GRANGEVILLE, IDAHO  
(VIA TRAY)


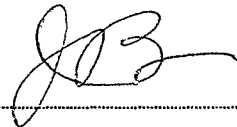
☒ Courthouse Tray

JONATHON D. HALLIN  
WILCOX & HALLIN, PLLC  
ATTORNEYS AT LAW  
P.O. BOX 927  
McCALL, IDAHO 83638  
FAX #: 208-634-5880

☐ Courthouse Tray  
☒ US Mail  
☐ Fax

ROSE E. GEHRING, Clerk  
  
Deputy Clerk

# LOG OF PROCEEDINGS ELECTRONICALLY RECORDED

<b>Description</b>		St-vs-Lankford CR 83-20158 Telephonic Status Prosecutor: Kirk MacGregor Defense: Chuck Kovis D65 Court Reporter: Keith Evans Presiding Judge: John Bradbury
<b>Date</b>	4 / 2 /2009	<b>Location</b> DISTRICTCOURTW2
<b>Time</b>	<b>Speaker</b>	<b>Note</b>
01:34 PM		Court announces case
01:35 PM		MacGregor in court room
01:35 PM		Hallin appears telephonically
01:35 PM		court gives synopsis of case
01:35 PM		court discusses with counsel re: briefing schedule for motions
01:35 PM		Hallin addresses court
01:36 PM		court responds and discusses with counsel
01:36 PM		Hallin responds - advise court by letter prior to next thursday
01:36 PM		MacGregor will not file brief re: Rule 35
01:37 PM		Court responds and addresses counsel
01:37 PM		Hallin concurs
01:37 PM		MacGregor will file brief re: new trial
01:38 PM		Recess
01:38 PM		 Deputy Court Clerk  District Judge 

DOCKETED

APR 23 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

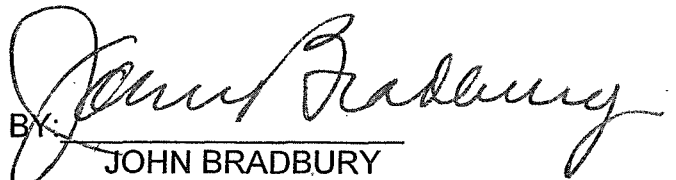
State of Idaho  
Plaintiff,  
vs.  
Mark H. Lankford  
Defendant.

CASE NO. CR 83-20158

ORDER RESCINDING  
TRANSPORT ORDER

The Order for Transport and Return filed by the Court on February 25, 2009  
is hereby rescinded. The hearing was continued therefore the defendant's presence is not  
required for May 14, 2009.

It is so ordered this 23 day of April 2009.

BY:   
JOHN BRADBURY  
District Judge



Mailing Certificate

I, the undersigned Deputy Clerk, do hereby certify that I mailed or delivered a copy of the foregoing document to the following persons on 4.23.09 :

Kirk MacGregor, delivered to tray

Charles Kovis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843

Inmate Placement, fax 327-7444  
Idaho County Sheriff, Delivered to tray  
Idaho County Jailer, Delivered to tray  
I.C.I.O., fax 476-4050

ROSE E. GEHRING, CLERK

BY:

Kathy Johnson  
Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 5:00 O'CLOCK P.M.

DOCKETED

JUN - 4 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Rose E. Gehring* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  Plaintiff,  vs.  Mark H. Lankford  Defendant.	Case No. CR 83-20158  ORDER FOR TRANSPORT AND RETURN
--	---

The defendant is currently incarcerated at the I.C.I.O., Orofino, Idaho;

IT IS HEREBY ORDERED that the Idaho Department County Sheriff's Department shall cause the above named defendant to be returned to Court for further proceedings on Thursday, August 27, 2009, at the hour of 2:00 p.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 4 day of June 2009.

*John Bradbury*  
JOHN BRADBURY

ORDER FOR TRANSPORT AND RETURN - 1

District Judge

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 10-4-09 to:

Inmate Placement, fax 327-7444  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O., faxed 476-4050

ROSE, E. GEHRING, Clerk of Court

by Kathy Johnson  
Kathy Johnson, Deputy Clerk

ORDER FOR TRANSPORT AND RETURN - 2

COURT MINUTES

CR-1983-0020158

State of Idaho vs. Mark Henry Lankford

Hearing type: Oral Argument

Hearing date: 8/27/2009

Time: 9:43 am

Judge: John Bradbury

Courtroom:

Court reporter: Keith Evans

Minutes Clerk: Joan Hall

Tape Number: D68

Defense Attorney: Chuck Kovis

Prosecutor: Kirk MacGregor

2:06 Court introduces case; Mr Lankford w/ Mr Kovis; Mr MacGregor present

2:07 Mr Kovis addresses court

2:08 Court addresses all parties

2:09 Mr Lankford addresses the court; court interjects; Mr Lankford continues

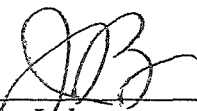
2:15 Mr MacGregor addresses the court; court interjects; Mr MacGregor continues;  
exchange with court; Mr MacGregor continues;

2:35 Mr Lankford argues;

2:40 Mr MacGregor argues

2:41 Court considers submitted will get a decision timely

2:41 Recess

  
\_\_\_\_\_  
District Judge

IDAHO COUNTY DISTRICT COURT  
AT 3:40 FILED  
O'CLOCK P.M.

DOCKETED

OCT - 7 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
Kathy Johnson DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

State of Idaho

Plaintiff,

vs.

Mark H. Lankford


Defendant.

CASE NO. CR 83-20158

ORDER

The motions for a new trial based on the admission of prior trial testimony at the second trial and on permitting the jury to know there had been a prior conviction and imprisonment are DENIED. A memorandum explaining my reasons will follow.

It is so ordered this 7 day of October 2009.

BY:   
JOHN BRADBURY  
District Judge

Mailing Certificate

I, the undersigned Deputy Clerk, do hereby certify that I mailed or delivered a copy of the foregoing document to the following persons on 10.7.09:

Kirk MacGregor, Delivered to tray

Charles Kovis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843

J. D. Hallin  
Attorney at Law  
P.O. Box 1067  
McCall, ID 83638

ROSE E. GEHRING, CLERK

BY:

Kathy Johnson  
Deputy Clerk

DOCKETED

OCT 15 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kelly Johnson* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

State of Idaho

Plaintiff,  
vs.

Mark H. Lankford

Defendant.

CASE NO. CR 83-20158

ORDER

The record is not clear whether the parties desire oral argument on Mark Lankford's Rule 35 Motion. On April 2, 2009, Mr. MacGregor declined to file a brief. Oral argument was not requested at that time. If oral argument has not been requested by October 30, 2009, I will consider the issue submitted on the existing record as of that date.

If a request is made by that date a scheduling conference will be arranged.

It is so ordered this 15<sup>th</sup> day of October 2009.

BY: *John Bradbury*  
JOHN BRADBURY  
District Judge

Mailing Certificate

I, the undersigned Deputy Clerk, do hereby certify that I mailed or delivered a copy of the foregoing document to the following persons on 10-15-07:

Kirk MacGregor, Delivered to tray

Charles Kavis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843

J. D. Hallin  
Attorney at Law  
P.O. Box 1067  
McCall, ID 83638

ROSE E. GEHRING, CLERK

BY

Kathy Johnson  
Deputy Clerk



DOCKETED

IDAHO COUNTY DISTRICT COURT  
AT 9:49 FILED A.M.

OCT 21 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

v.

MARK HENRY LANKFORD,

Defendant.

Case No.: CR-83-20158

MEMORANDUM DECISION

This matter comes before me on Mr. Lankford's motion for a new trial.

I. FACTS

A jury first convicted Mr. Lankford in Grangeville in 1989 of the first degree murders of Robert and Cheryl Bravence. During that trial Gilda Howard, Art Goodloe, Ernest Wells, Arnold Lazzani, Roy Ralmulto and Ned Stuart were among the forty three witnesses that testified. They were all cross examined or available for cross examination at that time.

In 2006, the Ninth Circuit Court of Appeals ordered a new trial within 120 days of its order. The basis for reversal was an improper jury instruction regarding the evidence necessary to prove corroboration. The lapse of time between the first and second trial was a significant obstacle to the State's presentation of evidence, particularly since the

witnesses referenced above had died. After briefing and argument, I ruled on all the issues presented in this motion.<sup>1</sup> I allowed transcript of testimony from the first trial by witnesses who had since died to be read to the jury, and I informed the jury during voir dire that there had been a previous trial and that a new trial had been ordered. Mr. Lankford was convicted by the second jury in Wallace in 2008.

Given the gravity of the offenses for which Mr. Lankford has been convicted, and the severity of the punishment that he faces, I am obliged to revisit these issues. I write now to give a detailed explanation of the reasoning behind my previous rulings and my order denying a new trial that I entered on October 7, 2009.

## II. CONTENTIONS

Mr. Lankford contends that he should be granted a third trial because witness testimony from his first trial was improperly admitted at his second trial, in violation of Idaho Code 19-2405. At oral argument, Mr. Lankford also argued that re-use of the testimony denied him his Constitutional right to confront witnesses against him because his lawyer had been ineffective at the first trial and because he was not given an opportunity to impeach. Finally, he alleges that it was improper for his first trial to have been mentioned during his second trial.

The State contends that the testimony was properly admitted under Idaho Rule of Evidence 804(b)(1) and *Crawford v. Washington*, 541 U.S. 36 (2004), because Mr. Lankford had sufficient opportunity to confront the witnesses at his first trial and they were dead when the second trial took place.

---

<sup>1</sup> I have located my rulings that the previous testimony was admissible, that Mr. Lankford had the opportunity to impeach, and that his counsel was adequate. Trial transcript, at 180. I have been unable to locate my ruling that some limited reference to the previous trial was appropriate, although I clearly remember making that ruling. For a more detailed discussion of this issue, please see section C below.

### III. DISCUSSION

#### ***A. Standard of Review***

Idaho Code 19-2406 states that a “district court may [...] grant a new trial in the following circumstances only”, and lists seven such circumstances. I.C. 19-2406. The relevant paragraph is (5): “When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.” *Id.* District courts are given wide discretion when determining whether to grant a new trial, and that decision will not be disturbed unless there is a showing of manifest abuse. *State v. Mack*, 132 Idaho 480, 483 (Ct. App. 1999).

#### ***B. The testimony from the first trial was properly admitted at the second trial***

There are two levels of analysis when deciding whether prior testimony was properly admitted at the second trial. The first question is whether the requirements of *Crawford* and 804(b)(1) were met. If so the evidence was admissible, and I then must determine whether the testimony must be excluded, regardless of admissibility, under Idaho Code 19-2405 because it was the product of Mr. Lankford’s previous trial for the same offense.

- a. The prior testimony was admissible evidence because the witnesses were deceased and Mr. Lankford had adequate opportunity to cross examine.

The U.S. Supreme Court has decided the Confrontation Clause applies to out-of-court testimonial statements introduced at trial. *Crawford*, 541 U.S. at 50-51. When those statements are made by a witness who is not available for trial, they are only admissible if “the defendant had had a prior opportunity for cross examination.” *Id.* at 53-54. The Idaho Rules of Evidence provide a similar restriction on out-of-court statements by

unavailable witnesses: the defendant must have "had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." I. R. E. 804(b)(1).

Here, Mr. Lankford had the opportunity to cross examine all of these witnesses at his previous trial, and did in fact cross examine them. Because the trial was for the same offense, his motive to cross examine would have been the same as it was at his second trial. I conclude, therefore, that both the U.S. Constitution and the Idaho Rules of Evidence have been satisfied.

Similarly, I find no basis for Mr. Lankford's related argument that he has been denied an opportunity to impeach the witnesses against him. He had that opportunity at the first trial. In addition, Idaho Rule of Evidence 806 specifically states that when hearsay statements are admitted into evidence, "the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would have been admissible for those purposes if declarant had testified as a witness." He could have presented impeachment evidence at either of his trials.

Finally, I reject Mr. Lankford's argument that he was denied the opportunity to cross examine because his representation was ineffective at his first trial. Mr. Lankford has the burden of proving that his counsel was ineffective, and that burden is not met by mere allegations. *State v. Zeigler*, 107 Idaho 1133, 1136 (Ct. App. 1985). The only aspect of Mr. Lankford's lawyer's representation that the Ninth Circuit found to be ineffective was one jury instruction. It would be untoward to extrapolate that singular finding to conclude that the entire trial was contaminated, and Mr. Lankford has offered no evidence that it was.

- b. Idaho Code 19-2405, which provides that all testimony must be “produced anew” where a new trial is granted, does not bar the use of testimony from witnesses that have died.

The gravamen of Mr. Lankford’s most recent motion for a new trial is Idaho Code 19-2405, which reads in its entirety:

The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict can not be used or referred to either in evidence or in argument.<sup>2</sup>

Mr. Lankford argues that he has not been placed in the same position as if the earlier trial had not been had, and also that the testimony was not produced anew. Neither party has provided any case law applying this statute, and my independent research has disclosed none. Moreover, there is no legislative history available for a statute that was passed in 1864.<sup>3</sup> Therefore, I look to three imperfect sources to guide my analysis: 1) similar laws in other jurisdictions; 2) conflicting statutory law in Idaho; 3) factually similar Idaho case law.

1) The relevant part of California Penal Code § 1180 differs from Idaho Code 19-2405 only by the insertion of a comma. California’s law was enacted in 1872, and the California Supreme Court addressed the issue raised by Mr. Lankford one year later, stating that “[t]o prove what a witness swore to in a former trial, is producing the

---

<sup>2</sup> The compiler’s note in the most recent (2004) version of the Idaho Code states that the law was “rescinded” as “a rule of procedure and practice for the courts of Idaho” in 1974-75. It appears that this rescission was due to an overhaul of the Rules of Civil Procedure and was not intended to have any effect on criminal rules. Honorable Robert E. Bakes, *The New Idaho Rules of Civil Procedure*, *The Advocate*, Vol. 18 No. 1, January 1, 1975, p.1. Furthermore Idaho Code 19-2405, a statute, was originally published under the heading “Criminal Practice Act”, so it is unclear why it would have been effected by a change to civil rules. Cr.Prac. 1864 s. 426. In any event, I assume that it is of continued validity in criminal cases for purposes of this analysis.

<sup>3</sup> There is no legislative record available at the University of Idaho Law Library, and Kristen Ford, the State of Idaho’s Legislative Librarian, stated that records are not available for legislative sessions before 1889.

testimony anew, and is not using or referring to the former verdict[.]” *People v. Devine*, 46 Cal. 45, 45, 1189 WL (1873). I conclude that Mr. Lankford’s argument would fail in California.

Oklahoma Statute 22 § 951 reads, in relevant part:

The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew *except of witnesses who are absent from the state or dead, in which event evidence of such witnesses on the former trial may be presented*; and the former verdict cannot be used or referred to either in evidence or in argument[.](difference between this statute and 19-2405 placed in italics)

The Oklahoma law is identical to Idaho’s 19-2405 except for a clause specifically addressing the issue raised by Mr. Lankford, and it is clear that his argument would also fail in Oklahoma.

2) Mr. Lankford’s interpretation of Idaho Code 19-2405 is in conflict with Idaho Code 9-206, which reads:

The testimony of a witness who testified at the trial in an action or proceeding in any district court of the State of Idaho, when transcribed and certified to be true or correct by the court reporter reporting such testimony at such trial or proceeding, shall be admissible at any subsequent trial between the same parties and relating to the same subject matter, when such witness is deceased, absent from the state or otherwise unavailable or unable to testify as a witness.

*See also* I. R. E. 804(b)(1). I note that this statute describes the situation in this case much more directly than does section 19-2405. It is also worth noting that section 9-206

is a more robust, considered, and current standard, given that it has been applied and explained by case law. There is no evidence that section 19-2405 has ever been applied, let alone in the manner which Mr. Lankford argues. Section 19-2405 was enacted while Idaho was still a territory, and many of Idaho's laws from that period were borrowed from Oregon or California. For that reason, I feel it is more appropriate to rely on law from other jurisdictions in interpreting section 19-2405 than would be the case with a more recent provision of the Idaho Code.

3) Mr. Lankford's reading of section 19-2405 is contrary to on-point Idaho precedent. In *State v. Johnson*, 62 Idaho 601 *passim* (1941), a man who had been convicted of murdering and taking property from the deceased was given a new trial. The second trial also resulted in a conviction, and on appeal he argued that testimony from a witness that was present at the first trial but had died before the second trial should not have been admitted. The court held that there was no error in admitting the testimony. *See also State v. Brassfield*, 40 Idaho 203, 207-08 (1925); *State v. Ward*, 51 Idaho 68, 74 (1931).

***B. References to the prior conviction were proper and necessary***

Mr. Lankford alleges that the I erred by permitting references to his first trial at this second trial. Idaho Code 19-2405 states that "the former verdict can not be used or referred to either in evidence or in argument." Since there are no Idaho cases applying this statute, I again turn to cases interpreting similar statutes. In *Romano v. State*, 909 P.2d 92, 115 (Okla. 1995), the defendant alleged that there had been three references by the prosecution to the defendant's previous trial on the same matter. The court stated:

We have held similar references to a first trial harmless error because they did not tell the jury anything they did not already know. (Citations omitted). In the present case the jury was well aware a prior 'proceeding' had occurred. They were presented with witnesses, in person and via transcript, to a crime several years old and with evidence that some exhibits had been admitted in the earlier 'proceeding.'" *Id.* at 115. [...] [We therefore conclude that] [w]hile these allusions to the fact Appellant had been previously tried for the murder of decedent may have violated the trial court's ruling any error is harmless." *Id.*

A similar set of circumstances arose in *Wingfield v. State*, 205 P.2d 320, 325 (Okl. 1949) overruled on other grounds by *Hommer v. State*, 657 P.2d 172 (Okl. 1983). There, the court stated:

The foregoing statute and cases must be construed and applied in the light of reason. In the trial of this case there were many references to the former trial and much reading from the testimony given by witnesses therein who were absent at the trial now under consideration. Under these conditions, a reasonably intelligent jury might rightly conclude, that there may have been a former conviction, which had been set aside on either a motion for new trial or by reason of reversal on appeal. To not so reason would be to indulge the presumption that the jury was composed of men wholly unversed in such matters. In this enlightened age we believe such an assumption would be based on a false premise. However, we do not in any sense approve the court's allusion to the reviewing of the opinion of the Criminal Court of Appeals in relation to the defendant's right to make the arrest of the deceased. It was entirely unnecessary,



and was error for the court so to do, but error of a technical and not a substantial nature. It did not tell the jury anything, which under the conditions, they did not already know. We are therefore of the opinion that it was not such an error that merits a reversal of this case. *Id.* at 325; *see also People v. Peckham*, 249 Cal.App.2d 941, 947 (1967).

In the present case, mentioning that there was a prior trial did not tell the jury anything that they did not already know. The fact that so much time had passed since the crime, and the fact that much of the testimony was given at a previous proceeding, made it obvious that Mr. Lankford had already been tried once for this offense.

Moreover, Mr. Lankford suffered no prejudice from the reference to his previous trial. Immediately after informing the jury that a previous trial had taken place, I gave a limiting instruction prohibiting them from letting that information taint their assessment of the evidence in the new trial.<sup>4</sup> Such instructions are presumptively effective under the law. *State v. Pugsley*, 128 Idaho 168, 175 (1995) (“[I]t is assumed that a jury follows a limiting instruction.”). The conclusion that prejudice did not occur is also supported by the overwhelming evidence of guilt that was produced in this trial. For both those reasons, I find that even if mentioning the previous trial was an error, it is not grounds for granting a new trial.

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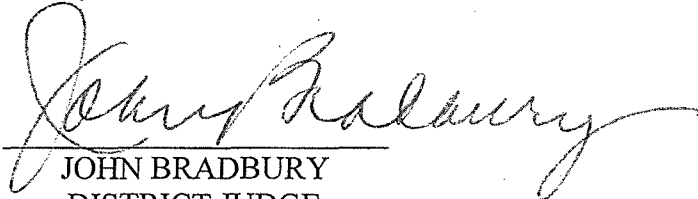
<sup>4</sup> “Ladies and gentlemen, I’m going to tell you now that you no doubt are wondering why Mr. Lankford is being tried now for an offense that occurred in 1983. There was a prior trial in Idaho County in 1984 for the offenses for which he is now charged. And an Appeals Court held that Mr. Lankford was not effectively represented and that his trial was therefore unfair. As juror you are not to consider the earlier trial and deliberate whether or not Mr. Lankford is guilty. In other words, you must presume him to be innocent and judge the charges against him solely on the evidence that is presented during this trial without considering in any manner his earlier trial. And I would simply ask you that, is there anyone here who thinks that he or she would not be able to judge the charges against Mr. Lankford because of the earlier trial that Mr. Lankford went through?” Transcript at 115, lines 6-22.

Finally, neither party objected when the previous trial was mentioned. To the contrary, on several occasions the parties, outside the presence of the jury, discussed at great length how to address this issue. See e.g. Transcript at 36, lines 101-114. A consensus was reached that some limited reference to the prior trial was necessary. The alternative would have been to tell the jury nothing, have them speculate why a trial was being held twenty-four years after the offense, and not know if they would consider any conclusions they reached about a prior trial during their deliberations. By mentioning the prior trial during voir dire the jury was picked from a panel that agreed not to consider the prior trial. That was a common sense resolution that, in my judgment, enhanced the fairness of the trial rather than detracted from it.

#### IV. CONCLUSION

I conclude that there is no legal basis for a new trial. Assuming the error Mr. Lankford posits, it did not detract from the fundamental fairness of the trial. "To say that a criminal, after having once been convicted by the testimony of a certain witness, should go scot free simply because death has closed the mouth of that witness, would be carrying his constitutional rights to an unwarrantable extent." *Mattox v. United States*, 156 U.S. 237, 243 (1895). Mr. Lankford's argument hinges on a contrived reading of a statute which has not been applied as he argues in one recorded case in the 145 years since it was enacted. It is for these reasons that I denied his motion for a new trial.

Dated this 21 day of October, 2009.

  
JOHN BRADBURY  
DISTRICT JUDGE

CERTIFICATE OF DELIVERY

I, the undersigned, a Deputy Clerk of the above entitled Court, do hereby certify that a copy of this document was mailed or delivered on October 21st, 2009 to the following persons:

Chuck E. Kovis  
312 S. Washington St. Ste. 4  
Moscow, ID  
83843

☒ U.S. Mail  
☐ Overnight Mail  
☐ Fax  
☐ Hand Delivery

Kirk A. MacGregor  
Idaho County Prosecutor  
416 West Main Street  
Grangeville, ID  
83843

☐ U.S. Mail  
☐ Overnight Mail  
☐ Fax  
☒ Hand Delivery

Rose E. Gehring, CLERK

By: Kathy Johnson  
Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 11:14 O'CLOCK A.M.

OCT 29 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Nathaniel Johnson* DEPUTY

**DOCKETED**

Charles E. Kovis  
312 South Washington  
P.O. Box 9292  
Moscow, ID 83843  
Telephone: (208) 882-3939  
Fax: (208) 882-5379  
I.S.B.N. 4700

JONATHON D. HALLIN  
HALLIN LAW, PLLC  
136 E. Lake Street, Ste. 1  
P.O. Box 1067  
McCall, Idaho 83638  
Telephone: (208) 634-5040  
Facsimile: (208) 634-5041  
Email: hallinlaw@gmail.com  
ISB # 7253

*Attorneys for Defendant*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR-1983-20158

**SECOND MOTION FOR NEW TRIAL**

COMES NOW, the Defendant, MARK H. LANKFORD, by and through his counsel of record, Jonathon D. Hallin, and hereby moves this Honorable Court for an Order granting a new trial to Mr. Lankford in the above-captioned matter.

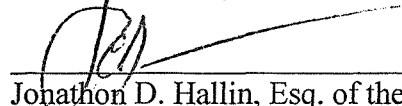
THIS MOTION is made pursuant to Rule 34, Idaho Criminal Rules, and Idaho Code § 19-2406(7). THIS MOTION is based upon the *Petition for Writ of Habeas Corpus*, dated October 18, 2009, and filed by Bryan Stuart Lankford in United States District Court Case No. 09-538-LMB. A true and correct copy of the *Petition for Writ of Habeas Corpus* is attached and incorporated hereto as Exhibit A.

BASED UPON THE FOREGOING, the Defendant, Mark H. Lankford, respectfully submits that a new trial is required in the interest of justice. Mr. Lankford respectfully requests a hearing to submit further evidence and testimony in support of this Motion, and leave to submit supplemental briefing as deemed appropriate.

RESPECTFULLY REQUESTED this 21st day of October, 2009.

HALLIN LAW, PLLC

By:

  
Jonathon D. Hallin, Esq. of the Firm  
Attorney for Defendant

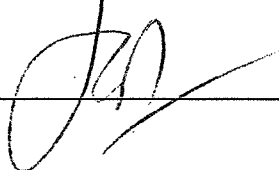
CERTIFICATE OF MAILING

I hereby certify that on the 26<sup>th</sup> day of October, 2009, I caused a true and correct copy of the above and foregoing document to be served by the method indicated below to the following persons:

- ☒ U.S. Mail
- ☐ Certified Mail
- ☐ Federal Express
- ☐ Fax
- ☐ Deputy Fax
- ☐ Hand Delivery
- ☐ Box

Kirk A. MacGregor  
Adam H. Green - Deputy  
Idaho County Prosecuting Attorney  
P.O. Box 463  
Grangeville, Idaho 83530  
Fax: (208) 983-3919  
Deputy Fax: (208) 983-1401

SIGNED: \_\_\_\_\_



Case 1:09-cv-00538-LMB Document 1 Filed 10/21/09 Page 1 of 14

## U.S. COURTS

OCT 20 2009

Rcvd. Filed Time  
CAMERON S. BURKE  
CLERK, DISTRICT OF IDAHOBRYAN STUART LANKEFORD #20488

Full Name/Prisoner Number

I.M.S.I. UNIT J2-53AP.O. BOX 51BOISE, IDAHO 83707

Complete Mailing Address

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF IDAHO

BRYAN STUART LANKEFORD

Petitioner,

(full name)

vs.

JEFF ZMUDA

Respondent,

(full name)

CASE NO. 09-538-LMB  
(to be assigned by the Court at filing)PETITION FOR WRIT  
OF HABEAS CORPUS

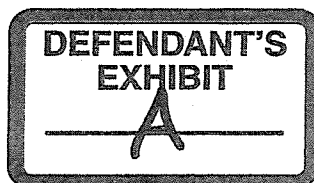
## PETITION FOR A WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2254

BY A PERSON IN STATE CUSTODY

PART ONE: CONVICTION AND/OR SENTENCE UNDER ATTACK

1. Name and location of the state court which entered the judgment of conviction challenged:  
DISTRICT COURT, SECOND JUDICIAL DISTRICT, GRANGEVILLE, ID.
2. Date judgment of conviction was entered: 1984
3. Case number 20157
4. State each offense of which you were convicted and the sentence for each:  
HOMICIDE, 2 COUNTS, 2 INDETERMINATE  
LIFES TO RUN CONCURRENT.



Case 1:09-cv-00538-LMB Document 1 Filed 10/21/09 Page 2 of 14

5. What was your plea? Not Guilty ☒ Guilty ☐ Nolo Contendere ☐  
 6. If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement:

NOT GUILTY - BUT WITH PLEA BARGAIN, NEW AGREEMENT WAS: MOVED OUT OF STATE MEDIUM SECURITY, NAME CHANGE, SENATOR PROSECUTOR & CHIEF DETECTIVE TO TESTIFY FOR PLAINTIFF AT PAROLE HEARING ETC.

7. Kind of trial: Jury ☒ Judge only ☐ None (pled guilty) ☐  
 8. If you had a trial, did you testify at trial? Yes ☒ No ☐  
 9. Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes ☐ No ☒ If "Yes," please state details of the other conviction and sentence: \_\_\_\_\_

## PART TWO: CLAIMS

State concisely every claim that you are being held unlawfully. Briefly state the federal constitutional provision, U.S. Supreme Court case, federal law or federal treaty ("federal ground") upon which you bring the claim, but do not make legal arguments. Briefly summarize the facts supporting each claim. If necessary, you may attach extra pages stating additional claims. You should raise in this petition all claims for relief which relate to the conviction under attack. In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request relief from the federal court.

### First Claim:

1. Federal Ground: AMENDMENT 14,  
 2. Supporting Facts: STATE OF IDAHO BREACHED AGREEMENT BY NOT HAVING SENATOR JAMES RISCH TESTIFY ON PLAINTIFF BEHALF AT OCT. 23<sup>RD</sup> '08 PAROLE HEARING AS AGREED TO ON FEB. 17<sup>TH</sup> '08, NOR DID STATE PROSECUTORS & SHERIFFS DEPT. TESTIFY POSITIVELY FOR PLAINTIFF. STATE V. LANKFORD, 903 P.2d 1305, 1310 (IDaho 1995)

### Second Claim:

1. Federal Ground: AMENDMENT 8,  
 2. Supporting Facts: PLAINTIFF WAS ASSAULTED BY IDAHO COUNTY SHERIFFS DEPT. AND COEUR D'ALENE IDAHO SHERIFFS DEPT. IN ORDER TO FORCE PLAINTIFF TO TESTIFY IN IDAHO COUNTY CASE# CR-83-20158, AND TO BARR PLAINTIFF FROM TESTIFYING AT SENTENCING, AND SENT PLAINTIFF TO BE KILLED AT HARVEST PRISON IN UKA. 28 USC 1331 & 28 USC 1343(A)(3) THIS COURT HAS SUPPLEMENTAL JURISDICTION OVER PLAINTIFFS STATE-LAW CLAIMS PURSUANT TO 28 USC X 1367.



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## Third Claim:

1. Federal Ground: AMENDMENT 5
2. Supporting Facts: STATE AND COUNTY OF IDAHO SHERIFFS DEPT. AND PROSECUTORS STOLE \$2,000.00 WORTH OF PROPERTY FROM PLAINTIFFS PROPERTY IN PLAINTIFFS CELL.  
RAMIREZ V. COUNTY OF ORANGE U.S. DC, CA # 8:2007 CV-00601  
HAYWOOD V. DROWN 2007 NY SLIP OF 9308, 1 (NY, 2007)

PART THREE: CASE HISTORY-DIRECT APPEAL AFTER CONVICTION

1. Did you file a direct appeal from the judgment of conviction? Yes ☒ No ☐
2. Appellate case number: 20157
3. Case decided by Idaho Court of Appeals ☐ or Idaho Supreme Court ☒
4. Date of decision: NA
5. If case decided by Idaho Court of Appeals, did you file a Petition for Review with the Idaho Supreme Court? Yes ☐ No ☐
6. Date Idaho Supreme Court denied review or date of decision: GRANTED & DENIED
7. Specify the claims raised in your direct appeal which are the same as any claims raised in this federal petition:  
BREACH OF AGREEMENT.

8. Attach copies of any Idaho Court of Appeals or Idaho Supreme Court decisions.
9. If you did not file a direct appeal, explain briefly why you did not: \_\_\_\_\_
10. Did you seek permission to file a late appeal? Yes ☒ No ☐ Not applicable ☐

PART FOUR: CASE HISTORY-POST-CONVICTION PROCEEDINGS

If you have filed any Rule 35 Motions, Post-Conviction Relief Petitions, State Habeas Corpus Petitions, or other post-conviction applications or motions with respect to this judgment in any state court, complete the following for each such motion or petition. If necessary, you may attach extra pages stating additional state court actions you pursued.

1. Name of First Motion or Petition: \_\_\_\_\_  
 Date Filed: \_\_\_\_\_  
 Name of court: \_\_\_\_\_  
 Specify the claims raised which are the same as any claims raised in this federal petition:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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Evidentiary hearing held? Yes ☐ No ☐

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_

Did you appeal? Yes ☐ No ☐

Appellate case number: \_\_\_\_\_

Case decided by Idaho Court of Appeals ☐ or Idaho Supreme Court ☐

Date of decision: \_\_\_\_\_

If case decided by Idaho Court of Appeals, did you file a Petition for Review with the Idaho Supreme Court? Yes ☐ No ☐

Date Idaho Supreme Court denied review or date of decision: \_\_\_\_\_

Attach copies of any Idaho Court of Appeals or Idaho Supreme Court decisions.

2. Name of Second Motion or Petition: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Name of court: \_\_\_\_\_

Specify the claims raised which are the same as any claims raised in this federal petition:

Evidentiary hearing held? Yes ☐ No ☐

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_

Did you appeal? Yes ☐ No ☐

Appellate case number: \_\_\_\_\_

Case decided by Idaho Court of Appeals ☐ or Idaho Supreme Court ☐

Date of decision: \_\_\_\_\_

If case decided by Idaho Court of Appeals, did you file a Petition for Review with the Idaho Supreme Court? Yes ☐ No ☐

Date Idaho Supreme Court denied review or date of decision: \_\_\_\_\_

Attach copies of any Idaho Court of Appeals or Idaho Supreme Court decisions.

**PART FIVE: NEW CLAIMS**

If any of the claims listed in this federal petition were not previously presented in any other court, state or federal, state briefly which claims were not so presented, and give your reasons for not presenting them:

ALL THREE ARE NEW, OCCURRING IN '08 & '09 I HAVE NOT PRESENTED THEM IN ANY OTHER COURT BECAUSE I'M IN FEAR OF MY LIFE, THEY ALREADY HURT ME & THEY HAD OTHERS HURT ME, AND THE STATE & SENATOR JAMES RICH HAVE ALOT OF POWER, SO I'M VERY AFRAID.

Case 1:09-cv-00538-LMB Document 1 Filed 10/21/09 Page 5 of 14

**PART SIX: PREVIOUS OR PENDING FEDERAL ACTIONS**

Have you previously filed any type of petition, application or motion in a federal court regarding the conviction challenged? Yes ☒ No ☐

If "Yes," answer the following:

Name and location of court: U.S. SUPREME COURT  
Case number: 88-7247  
Type of proceeding: WRIT OF CERT.  
Claims raised: NOTICE OF DEATH PENALTY

The result: GRANTED

Dismissed with prejudice? ☐ without prejudice? ☐ unknown ☐ still pending ☐

If action is completed, attach a copy of the court's decision.

**PART SEVEN: PENDING OR FUTURE STATE COURT ACTIONS**

Do you have any petition, motion or appeal now pending in any state court regarding the conviction or sentence challenged in your federal petition or do you plan to file one in the future? Yes ☐ No ☒

If "Yes," state the following:

1. Name of the court: U.S. DISTRICT COURT
2. Case Number: CV 08-0484-C-BLW
3. Type of Proceeding: NEWLY DISCOVERED EVIDENCE
5. Claims Raised or to be Raised: NEWLY DISCOVERED EVIDENCE.

**PART EIGHT: PRAYER**

Wherefore, Petitioner prays that the court grant him/her such relief to which he/she may be entitled in this proceeding. My preferred relief is EVIDENTIARY HEARING, APPOINTMENT OF COUNSEL AND MONITARY DAMAGES.

**PART NINE: REQUEST FOR ATTORNEY**

I do ☒ do not ☐ request that an attorney be appointed to represent me in this matter. I believe that I am in need of an attorney for these particular reasons which make it difficult for me to pursue this matter without an attorney: THIS IS VERY COMPLEX STUFF, AND WITHOUT A GOOD ATTORNEY I BELIEVE THEY WILL HAVE ME KILLED.

Case: 1:09-cv-00538-LMB Document 1 Filed 10/21/09 Page 7 of 14

## FEDERAL DEFENDER SERVICES OF IDAHO

## CAPITAL HABEAS UNIT

BRANCH OFFICE  
702 W. IDAHO, SUITE 900  
BOISE, IDAHO 83702  
(208) 395-1600  
FAX (208) 395-1757

BOISE OFFICE  
350 N. NINTH STREET, SUITE 300  
BOISE, IDAHO 83702  
(208) 388-1600  
FAX (208) 388-1757

July 1, 2009

Bryan Stuart Lankford #20488  
ADC 238468 B-Kasson CB-6  
Arizona State Prison Complex  
Florence Unit Central Kasson CB-6  
1A-10  
P.O. Box 8200  
Florence AZ 85232

Re: Bryan Lankford-Copies of Case Files/Materials

Dear Bryan:

I write on behalf of Teresa Hampton regarding the transfer of your copies of the documents and paperwork generated by this office. As we are not permitted to store these materials any longer we need to know to whom you would like them sent, (i.e. a friend, family member, etc.) and whether they would prefer a paper copy or if they would prefer a copy of all of the documents and materials on a CD.

I am enclosing a Release of Property form which will need to be filled out and signed by you prior to us releasing said materials. Please complete and return this form to our office as soon as possible. If we do not here from you within two weeks we will have no choice but to destroy the documents.

I hope to hear from you soon.

Sincerely,

*L. Allen*  
Lindsey M. Allen  
Legal Secretary

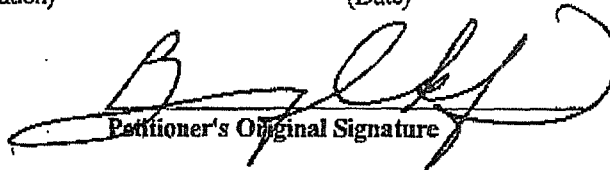
Enclosure

**PART TEN: DECLARATION UNDER PENALTY OF PERJURY AND SIGNATURE**

The undersigned declares under penalty of perjury:

- (1) that he/she is the petitioner in this action, that he/she has read this petition and that the information contained in the petition is true and correct, 28 U.S.C. § 1746; 18 U.S.C. § 1621; and
- (2) that he/she deposited this petition postage prepaid in a United States postal depository unit on 10-18-09 (date), OR that he/she gave the petition to prison officials for mailing and filing with the Clerk of Court under the indigent policy on \_\_\_\_\_ (date) OR (specify other) \_\_\_\_\_.

Executed at IMST. UNIT J2-53A on Oct. 18<sup>th</sup> 2009  
(Location) (Date)

  
Petitioner's Original Signature

**Note: you need not send a copy to Respondent or Respondent's attorney, but, instead provide one copy to the Court. After filing, your petition will be reviewed by a federal judge to determine whether you can proceed. If your case is authorized to proceed, the Court will effect service of the copy upon Respondent's attorney. Thereafter, whenever you file anything in the case, a copy must be mailed to Respondent's attorney.**

Case 1:09-cv-00538-LMB Document 1 Filed 10/21/09 Page 8 of 14

## FEDERAL DEFENDER SERVICES OF IDAHO

### CAPITAL HABEAS UNIT

BRANCH OFFICE  
702 W. IDAHO, SUITE 900  
BOISE, IDAHO 83702  
(208) 395-1600  
FAX (208) 395-1757

BOISE OFFICE  
350 N. NINTH STREET, SUITE 300  
BOISE, IDAHO 83702  
(208) 388-1600  
FAX (208) 388-1757

October 14, 2009

Bryan S. Lankford  
Idaho Maximum Security Institution  
Unit J2-53  
P.O. Box 51  
Boise, Idaho 83707

RE: Federal Habeas Corpus Proceeding, 3:08-cv-00484-BLW.

Dear Mr. Lankford:

My name is Tricia Russell and I am an attorney with the capital habeas unit of the Federal Defender Services of Idaho. As you are aware, on September 22, 2009, Teresa Hampton was appointed to represent you in your federal habeas corpus proceedings, (docket number: 3:08-cv-00484-BLW). Ms. Hampton has assigned me to review the pleadings and related documents pertaining to your claims and I am currently doing so. I have scheduled an attorney client visit with you on October 22, 2009, at 9:00 a.m., to initially discuss with you the pending habeas petition and plans for going forward.

I have received and read your correspondence received, September 29, 2009 and October 13, 2009, and wanted to address your seeking our assistance in filing a pleading in Idaho state court. Unfortunately, our office has only been appointed to represent you in your federal habeas case and I am therefore only authorized to file documents on your behalf in that legal proceeding. I understand your concerns about getting your pleading timely filed. However, please be aware that our office will not file in Idaho County Court the "Civil Suit for Violations Under Color of Law," that you mailed to us and that we received in our office on October 13, 2009. I can only suggest seeking assistance through inmate services.

I look forward to meeting you next week.

Sincerely,

*Tricia Russell*  
Tricia Russell

Case 1:09-cv-00538-LMB Document 1 Filed 10/23/09 Page 9 of 14

BRYAN STUART LANKFORD  
 I.M.S.I. UNIT J2-53  
 P.O. BOX 51  
 BOISE, IDAHO 83707

COP

IN THE DISTRICT COURT OF THE SECOND  
 JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
 IN AND FOR THE COUNTY OF IDAHO

BRYAN STUART LANKFORD } CASE NO.  
 PLAINTIFF

VS.

KIRK MACGREGOR, DENNIS  
 ALBERS OF IDAHO COUNTY } CIVIL SUIT FOR  
 PROSECUTORS OFFICE, LARRY } VIOLATIONS UNDER  
 DASENBROCK, SKOOT MEALER } COLOR OF LAW  
 JOAN KENNAW, MIKE QUINTAL,  
 RICHARD SHIRA OF IDAHO COUNTY  
 SHERIFFS DEPT. AND THE  
 COMMISSIONERS OF IDAHO  
 COUNTY }  
 DEFENDANTS

COMES NOW, PLAINTIFF BRYAN STUART LANKFORD  
 PRO. SE AND FILES THIS CIVIL SUIT AGAINST  
 THE DEFENDANTS, AND REQUEST A HEARING INTO  
 THE FOLLOWING CHARGES AND ALLEGATIONS OF  
 VIOLATIONS OF PLAINTIFFS CIVIL RIGHTS,  
CHARGES AND ALLEGATIONS

I.

KIRK MACGREGOR, DENNIS ALBERS AND

PAGE ONE OF SIX

SKOOT MEALER ENTERED INTO AN AGREEMENT IN WRITING AND ORALLY, WHICH STATED AMONG OTHER THINGS THAT: KIRK MCGREGOR, AND SKOOT MEALER WOULD TESTIFY ON PLAINTIFFS BEHALF AT PLAINTIFFS PAROLE HEARING IN OCTOBER OF 2008, AND THEY WERE SUPPOSE TO TESTIFY IN SUCH A WAY AS TO PERSUADE THE PAROLE COMMISSIONERS TO PAROLE PLAINTIFF, BUT INSTEAD THEY TESTIFIED AGAINST PLAINTIFF, AND THEY PERSUADED THE VICTIMS FAMILY TO NOT ONLY BE PRESENT AT THE PAROLE HEARING IN FORCE, BUT TO ALSO TESTIFY STRONGLY AGAINST PLAINTIFF, AND THE VICTIMS FAMILY WERE TOLD LIES BY KIRK MCGREGOR, SKOOT MEALER AND OTHER SHERIFF'S DEPT EMPLOYEES SO THEY COULD TESTIFY REGARDING THE LIES - NOT KNOWING THEY WERE LIES. ALSO KIRK MCGREGOR AND SKOOT MEALER PAID PART OF THE VICTIMS FAMILY TRANSPORTATION TO THE PAROLE HEARING, ALL OF WHICH IS BREACH OF AGREEMENT.



ALSO, PLAINTIFF REQUESTED HIS NAME BE CHANGED IN ACCORDANCE WITH THE AGREEMENT, WHICH WAS DENIED BY KIRK MCGREGOR AND SKOOT MEAVER, FURTHER BREACH OF AGREEMENT.

ALSO, PLAINTIFF WAS SUPPOSE TO BE MOVED OUT OF STATE TO A MEDIUM SECURITY PRISON WHERE IT IS SAFE AND HAS GOOD CONDITIONS, INSTEAD, PLAINTIFF WAS MOVED TO ONE OF THE HARSHTEST PRISONS IN THE UNITED STATES, FURTHER BREACH OF AGREEMENT.

ALSO, KIRK MCGREGOR AND DENNIS ALBERS AGREED TO HAVE SENATOR JAMES E. RISCH CALL, WRITE OR TESTIFY AT PLAINTIFFS PAROLE HEARING ON PLAINTIFFS BEHALF, PLAINTIFFS ATTORNEY OF RECORD GARY AMENDOLA AT THE TIME, WAS AWARE OF THAT AGREEMENT AND ALL OTHER AGREEMENTS WERE SEVERAL OTHER PEOPLE, BUT SENATOR JAMES E. RISCH NEVER CONTACTED THE PAROLE COMMISSION, BREACHING THE AGREEMENT FURTHER. HAD PLAINTIFF KNOWN THAT KIRK MCGREGOR, DENNIS ALBERS, SKOOT

MEALER AND SENATOR JAMES E. RISCH WERE GOING TO COMMIT FRAUD IN LYING TO PLAINTIFF, ATTORNEY'S, PLAINTIFFS FAMILY AND FRIENDS AND TO THE PEOPLE OF IDAHO, PLAINTIFF WOULD HAVE NEVER TESTIFIED IN CASE OF, "STATE VS. MARK LANKFORD"

## II

KIRK MCGREGOR AND SKOTT MEALER HAD THEY'RE SHERIFFS DEPT. BUDDIES PHYSICALLY ASSAULT PLAINTIFF JUST ONE AND A HALF HOURS BEFORE PLAINTIFF WAS TO TESTIFY IN THE MURDER TRIAL OF "STATE VS. MARK LANKFORD". THE ASSAULTS HAPPENED IN THE COEUR D'ALENE IDAHO SHERIFFS DEPT. AND PLAINTIFFS ATTORNEY GARY AMENDOLA AND MOST OF THE IDAHO COUNTY SHERIFFS DEPT. WAS AWARE OF THE ASSAULTS AS WERE THE PLAINTIFFS FAMILY AND FRIENDS. THE ASSAULTS WERE CLEARLY DONE TO LET PLAINTIFF KNOW THAT IF PLAINTIFF DID NOT TESTIFY FOR THE STATE, THAT PLAINTIFF WOULD BE BEATEN TO DEATH. ALSO PLAINTIFF WAS

ASSAULTED BY SKOOT MEALER AND KIRK MCGREGOR AT THE SHEEP CREEK CAMPGROUND, AND SKOOT MEALER INJURED HIMSELF DURING ASSAULT AND WAS HELPED UP OFF GROUND BY PLAINTIFF. PLAINTIFF REQUESTED THAT HIS ATTORNEY BE PRESENT ON THAT TRIP INTO THE FOREST, BUT KIRK MCGREGOR DENIED PLAINTIFFS REQUEST, AND ALTHOUGH SKOOT MEALER RECEIVED MEDICAL ATTENTION FOR HIS INJURIES, PLAINTIFFS REQUEST FOR MEDICAL ATTENTION WAS DENIED BY BOTH SKOOT MEALER AND KIRK MCGREGOR. CLEARLY PLAINTIFFS ATTORNEY WAS DENIED SO THERE WOULD BE NO WITNESSES, AND MEDICAL WAS DENIED SO THERE WOULD BE NO EVIDENCE NOR QUESTIONS BY MEDICAL PEOPLE.

PLAINTIFF WAS ASSAULTED AGAIN AT THE IDAHO COUNTY JAIL THE NIGHT BEFORE THE SENTENCING, WHEN HE WAS TRANQUALIZED SO THAT HE

COULD NOT TALK TO THE DEFENCE ATTORNEYS IN STATE VS. MARK HENRY LANKFORD, IDAHO COUNTY CASE CR-83-20158, NOR TESTIFY THE VERY NEXT MORNING AT THE SENTENCING REGARDING THE COACHED AND FABRICATED TESTIMONY OF LANE THOMAS, AND CHARGES HEREIN.

### III

THE IDAHO COUNTY SHERIFFS DEPT. EMPLOYEES: RICHARD SHIRA, MIKE QUENTAL, JOHN RENSHAW, LARRY DASENBROCK AND SKOOT MEALER STOLE ABOUT \$2,000.00 FROM PLAINTIFFS PROPERTY INCLUDING BUT NOT LIMITED TO: TWO \$325.00 EACH VERIZON WIRELESS LG VOYAGER CELL PHONES, A NOKIA CELL PHONE, TWO CD PLAYERS, ELECTRONIC GAMES, CD'S, BOOKS, 400 COLORED PENCILS & PENS THAT PLAINTIFF HAD IN CUI FOR ABOUT EIGHT MONTHS.

### CONCLUSION:

PLAINTIFF RESPECTFULLY REQUEST AND PRAYS FOR MONITARY DAMAGES OF \$2,000.00, AND PAIN AND SUFFERING DAMAGES OF \$200,000.00 AND AN EVIDENTIARY HEARING INTO THESE MATTERS. FURTHER PLAINTIFF SAYETH NOT DATED THIS 11<sup>TH</sup> DAY OF ~~OCTOBER~~ 2009.

B. STUART LANKFORD  
BRYAN STUART LANKFORD

COURT MINUTES

CR-1983-0020158

State of Idaho vs. Mark Henry Lankford

Hearing type: Telephonic Scheduling

Hearing date: 11/19/2009

Time: 4:00 pm

Judge: John Bradbury

Courtroom:

Court reporter: Keith Evans

Minutes Clerk: KATHYJ

Tape Number: D69

Defense Attorney: ~~State Public Defender~~ *Chuck Kovis*

Prosecutor: ~~Attorney General~~ *Kim MacGregor*

4:05 court announces case, all counsel appear telephonically  
Court addresses counsel re: motions

4:06 Hallin addresses court re: motions

4:07 Court responds and would like to set hearing date for rule 35

4:08 Hallin responds  
Court wishes to set time for Rule 35

4:09 Kovis addresses court re: Lankford to argue motion

4:11 MacGregor addresses court in response to conflicting dates  
Rule 35 Motion to be set for 1/21/10 at 2:30  
MacGregor addresses court re: dates for briefs

4:12 Court responds  
Court discusses with counsel  
Court requests briefs – state's no later than 12/28/09, defense to respond no later than 1/7/10

4:13 Recess

Signed:  \_\_\_\_\_, District Judge

Signed:  \_\_\_\_\_, Deputy Court Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 2:10 O'CLOCK P.M.

NOV 23 2009

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
Kathy Johnson DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

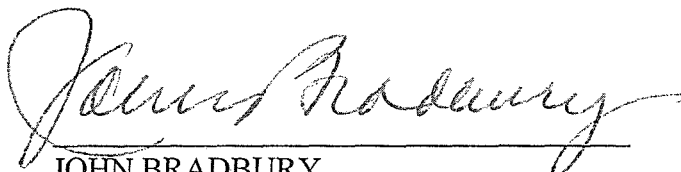
STATE OF IDAHO,  Plaintiff,  vs.  Mark H. Lankford  Defendant.	Case No. CR 83-20158   ORDER FOR TRANSPORT AND RETURN
--	---

The defendant is currently incarcerated at the Idaho Correctional Institution, Orofino, Idaho;

IT IS HEREBY ORDERED that the Idaho Department of Corrections shall cause the above named defendant to be returned to Court for further proceedings on Thursday, January 21, 2010, at the hour of 2:30 p.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho. Please have the defendant here by 10:00 a.m. so he may meet with his attorneys.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 23 day of November 2009.

  
JOHN BRADBURY  
District Judge

ORDER FOR TRANSPORT AND RETURN - 1

CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 11.23.09 to:

Inmate Placement, fax 327-7444  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O., faxed 476 4000

ROSE E. GEHRING, Clerk of Court

by Kathy Johnson  
Kathy Johnson, Deputy Clerk

ORDER FOR TRANSPORT AND RETURN - 2

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 9:25 O'CLOCK A.M.

DOCKETED

UEC 09 2009

Mark Henry Lankford  
20489 ICIO Al  
Hospital Drive North #23  
Orofino Idaho 83544-9023 USA  
Pro Se

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  
Plaintiff,

vs.

MARK HENRY LANKFORD,  
Defendant.

Case No. CR-1983-20158

AMENDED SECOND MOTION FOR NEW TRIAL

COMES NOW, the Defendant, MARK HENRY LANKFORD, pro se, and hereby moves this Honorable Court for an Order granting a New Trial to Mr. Lankford in the above captioned matter. This is an amendment to the Motion for New Trial filed with this Court on 26 October 2009.

This Motion is made pursuant to Rule 34, Idaho Criminal Rules, and Idaho Code §19-2406(7). This Motion is based upon the support documents in the original Motion for New Trial, with the added rationale in regard to the documents filed, (other than as "required in the interest of justice"), that the allegations are tantamount to a recantation by Bryan Stuart Lankford.

This recantation aspect is covered by Idaho Code §19-2406(7), as an element of newly discovered evidence.



In State v. Lankford, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990). Also, see Lankford v. Arave, 468 F.3d 578 (9th Cir. 2006), cert. denied, 128 S. Ct. 206, 169 L. Ed. 2d 246 (2007). The listings within Bryan S. Lankford's "Civil Suit for Violations Under Color of Law" depict Subornation of Perjury by the State of Idaho and the agents of the State of Idaho, in violation of Idaho Code §18-5410. The acts of assault, intimidation and bribery by the State of Idaho and agents of the State of Idaho mandate investigation by an unbiased, objective OUTSIDE agency, preferably the UNITED STATES JUSTICE DEPT., for no agency in Idaho will be able to delve into these crimes by the Idaho County Prosecutor's Office and the Idaho County Sheriff's Office without conflict of interest or inherent taint. Defendant hereby requests the Court to initiate such an inquiry on its own Motion, for the allegations should be very troubling to the Court, as it happened under his very nose.

Further, the above-cited documents depict that which was alleged during pre-trial hearings and trial; that Lane Franklin Thomas was a perjurer and was being either threatened, coerced or enticed by the Idaho County Prosecutor's Office to commit perjury, even though he had contacted his attorney and stated he did not want to testify: for the testimony the State wished to procure from him was transparently false. The Court allowed his testimony over the strenuous objections of the Defense and documents outlining this violation of Idaho Code.

New Ground of Motion for New Trial: Judge John H. Bradbury had no jurisdiction to hold pre-trial hearings or to preside over trial. This Ground for New Trial is covered under Idaho Code §19-2406(5) and (7) and Idaho Court Rule 34. Under the rubric of "newly discovered evidence", the Defendant has been made aware that Judge John H. Bradbury was outside his jurisdiction during all phases of pre-trial and trial proceedings in this matter. (A letter to this effect was mailed to the Court on this issue on 28 October 2009.) Defendant, while not possessing any documents from the Idaho Supreme Court (although requested), has learned that during the pendency of pre-trial and trial, Judge Bradbury was in violation of Idaho Code §1-809. This Statute reads as follows: RESIDENCY REQUIREMENT OF JUDGES.—"District judges shall actually reside at the place designated as resident chambers."

Defendant has been made aware that the Idaho Supreme Court has ruled that Judge Bradbury was in violation of this Statute and was ordered to move to Grangeville, Idaho, to thereby **COMPLY** with the law. The ruling is purported to read, "No judge is above the law." Since Judge Bradbury was in violation of the residency requirement during all pre-trial and trial proceedings in this matter, all such proceedings were outside his jurisdiction and thereby invalid. This mandates a new trial on its face, for the trial and all preceding hearings were illegal under Idaho Code.

BASED UPON THE FOREGOING, the Defendant, MARK HENRY LANKFORD, respectfully submits that a new trial is required, not only in the interest of justice, but due to Defendant being subjected to an illegal trial, which is a violation of Mr. Lankford's Constitutional Rights under both the Constitution of the United States and the Idaho Constitution; the judge in violation of the State law and prosecutorial misconduct and criminal acts. FURTHER, Mr. Lankford requests the Court to initiate an investigation into the crimes of the Prosecutor's Office. If the Court deems it cannot objectively and impartially **COMPLY** with Idaho Code, Mr. Lankford hereby requests the Honorable Judge John H. Bradbury to recuse himself from all legal proceedings pertaining to Mr. Lankford. Mr. Lankford hereby asserts bias against Mr. Lankford on the part of the Court and feels recusal would be the best avenue in which to ensure impartiality and fairness in the matter.

RESPECTFULLY REQUESTED this 8<sup>th</sup> day of December, 2009.

By: 

Mark Henry Lankford  
pro se

#### CERTIFICATE OF MAILING

I hereby certify that on the 8<sup>th</sup> day of December, 2009, I caused a true and correct copy of the above and foregoing document to be served by the method indicated below to the following persons:

Via U.S. Mail:

Kirk A. MacGregor

Adam H. Green-Deputy

Idaho County Prosecutor's Office

P.O. Box 463

Grangeville, Idaho 83530

Fax: (208) 983-3919

Deputy Fax: (208) 983-1401

AMENDED MOTION FOR NEW TRIAL-3  
(SECOND)

8/0

Charles E. Kavis  
Attorney at Law  
312 S. Washington  
Post Office Box 9292  
Moscow, Idaho 83843  
Telephone: (208) 882-3939  
Fax: (208) 882-5379  
Idaho State Bar # 4700

Attorney for Defendant

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 1:54 O'CLOCK P.M.

JAN 22 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

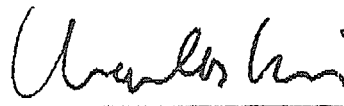
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CASE NO. CR-83-20158
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO CONTINUE
	)	ORAL ARGUMENT HEARING
	)	AND SCHEDULE STATUS
MARK H. LANKFORD,	)	CONFERENCE
	)	
Defendant.	)	

COMES NOW the defendant, Mark H. Lankford, by and through his attorney of record, Charles E. Kavis, and moves this court to continue the Oral Argument Hearing set for January 21, 2010 at 2:30 p.m. and to schedule a status conference in this matter.

This motion is made for the reason that defense counsel needs more time to determine if a conflict exists in representing Mr. Lankford.

DATED this 22<sup>nd</sup> day of January, 2010.

  
Charles E. Kavis  
Attorney for Defendant

MOTION TO CONTINUE  
FUGITIVE HEARING

CERTIFICATE OF SERVICE

I hereby certify that on the 22<sup>nd</sup> day of January,  
2010, a true and correct copy of the foregoing  
instrument was faxed to:

KIRK A. MACGREGOR  
IDAHO COUNTY PROSECUTOR  
P.O. BOX 463  
GRANGEVILLE, ID 83530  
FAX: (208) 983-3919

By Charles E. Kovis  
Charles E. Kovis

DOCKETED

IDAHO COUNTY DISTRICT COURT  
AT 9:01 FILED O'CLOCK A.M.

JAN 26 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kathy Johnson* DEPUTYIN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK H. LANKFORD,

Defendant.

CASE NO. CR-83-20158

ORDER CONTINUING  
ORAL ARGUMENT HEARING  
AND SCHEDULING STATUS  
CONFERENCE

The Court has reviewed the *Motion To Continue Oral Argument Hearing and Schedule Status Conference*, the records and files herein, and being fully advised about the premises,

**IT IS HEREBY ORDERED** that the oral argument hearing set for January 21, 2010 at 2:30 p.m. is continued and that a status conference is scheduled for the 11<sup>th</sup> day of

March, 2010 at 2:00pm

DATED this 26 day of January, 2010.

*John Bradbury*  
JOHN BRADBURY  
DISTRICT JUDGE

ORDER CONTINUING  
FUGITIVE HEARING

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of January  
2010, true and correct copies of the foregoing  
instrument were faxed to:

KIRK A. MACGREGOR  
IDAHO COUNTY PROSECUTOR  
P.O. BOX 463  
GRANGEVILLE, ID 83530  
FAX: (208) 983-3919

CHARLES E KOVIS  
ATTORNEY AT LAW  
312 S WASHINGTON  
P O BOX 9292  
MOSCOW ID 83843  
FAX: (208) 882-5379

By ROSE E. GEHRING, Clerk  
Kathy Johnson  
(Deputy) Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 10:58 O'CLOCK A.M.

FEB 22 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
Kathy Johnson DEPUTY

DOCKETED

Charles E. Kovis  
312 South Washington  
P.O. Box 9292  
Moscow, ID 83843  
Telephone: (208) 882-3939  
Fax: (208) 882-5379  
I.S.B.N. 4700

JONATHON D. HALLIN  
HALLIN LAW, PLLC  
136 E. Lake Street, Ste. 1  
P.O. Box 1067  
McCall, Idaho 83638  
Telephone: (208) 634-5040  
Facsimile: (208) 634-5041  
Email: hallinlaw@gmail.com  
ISB # 7253

*Attorneys for Defendant*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR-1983-20158

**MOTION FOR LEAVE TO  
WITHDRAW AS COUNSEL OF  
RECORD**

COMES NOW, Jonathon D. Hallin, co-counsel of record for Defendant, MARK HENRY LANKFORD, and hereby moves this Honorable Court to permit him to withdraw as co-counsel of record for Mr. Lankford in this cause.

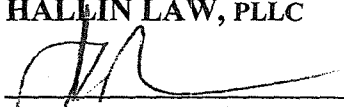
THIS MOTION is filed pursuant to Rule 44.1, Idaho Criminal Rules, and Rule 3.7 Idaho Rules of Professional Conduct, and supported by the accompanying Affidavit.

BASED UPON THE FOREGOING, undersigned counsel respectfully requests leave from this Court to withdraw as the Mr. Lankford's co-counsel of record in this matter.

RESPECTFULLY REQUESTED this 15<sup>th</sup> day of February, 2010.

HALLIN LAW, PLLC

By:

  
Jonathon D. Hallin, Esq of the Firm  
Attorneys for Defendant

#### CERTIFICATE OF MAILING

I hereby certify that on the 14<sup>th</sup> day of February, 2010, I caused a true and correct copy of the above and foregoing document to be served by the method indicated below to the following persons:

- ☒ U.S. Mail
- ☐ Certified Mail
- ☐ Federal Express
- ☐ Fax
- ☐ Deputy Fax
- ☐ Hand Delivery
- ☐ Box

Kirk A. MacGregor  
Adam H. Green - Deputy  
Idaho County Prosecuting Attorney  
P.O. Box 463  
Grangeville, Idaho 83530  
Fax: (208) 983-3919  
Deputy Fax: (208) 983-1401

- ☒ U.S. Mail
- ☐ Certified Mail
- ☐ Federal Express
- ☐ Fax
- ☐ Deputy Fax
- ☐ Hand Delivery
- ☐ Box

Mark Lankford  
I.C.I.O, Unit A1  
Orofino, Idaho 83544

SIGNED: 



IDAHO COUNTY DISTRICT COURT  
FILED  
AT 9:25 O'CLOCK A.M.

FEB 23 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

Charles E. Kovis  
312 South Washington  
P.O. Box 9292  
Moscow, ID 83843  
Telephone: (208) 882-3939  
Fax: (208) 882-5379  
I.S.B.N. 4700

JONATHON D. HALLIN  
HALLIN LAW, PLLC  
136 E. Lake Street, Ste. 1  
P.O. Box 1067  
McCall, Idaho 83638  
Telephone: (208) 634-5040  
Facsimile: (208) 634-5041  
Email: hallinlaw@gmail.com  
ISB # 7253

*Attorneys for Defendant*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR-1983-20158

**ORDER GRANTING JONATHON D.  
HALLIN LEAVE TO WITHDRAW AS  
CO-COUNSEL OF RECORD**

THIS MATTER having come before the Court upon Counsel's *Motion for Leave to*

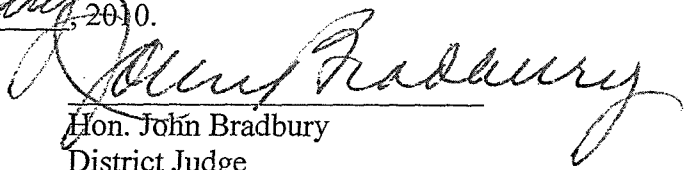
*Withdraw as Counsel of Record.*

ORDER GRANTING JONATHON D. HALLIN LEAVE TO WITHDRAW AS CO-COUNSEL  
OF RECORD - Page 1

IT APPEAR[ING] that good cause exists to allow Defendant's counsel of record, Jonathon D. Hallin, leave to withdraw as co-counsel of record in the above-captioned matter.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED that Jonathon D. Hallin is granted leave to withdraw as Defendant's co-counsel of record in the above-captioned matter.

SO ORDERED this 9<sup>th</sup> day of February, 2010.

  
Hon. John Bradbury  
District Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 23<sup>rd</sup> day of February, 2010, I caused a true and correct copy of the above and foregoing document to be served by the method indicated below to the following persons:

<input checked="" type="checkbox"/>	U.S. Mail	Jonathon D. Hallin
<input type="checkbox"/>	Certified Mail	Hallin Law, PLLC
<input type="checkbox"/>	Federal Express	136 E. Lake Street, Ste. 1
<input type="checkbox"/>	Facsimile	P.O. Box 1067
<input type="checkbox"/>	Hand Delivery	McCall, Idaho 83638
<input type="checkbox"/>	Box	Facsimile: (208) 634-5041
<input type="checkbox"/>	U.S. Mail	Kirk A. MacGregor
<input type="checkbox"/>	Certified Mail	Adam H. Green - Deputy
<input type="checkbox"/>	Federal Express	Idaho County Prosecuting Attorney
<input type="checkbox"/>	Fax	P.O. Box 463
<input type="checkbox"/>	Deputy Fax	Grangeville, Idaho 83530
<input type="checkbox"/>	Hand Delivery	Fax: (208) 983-3919
<input checked="" type="checkbox"/>	Box	Deputy Fax: (208) 983-1401
<input checked="" type="checkbox"/>	U.S. Mail	Mark Lankford
<input type="checkbox"/>	Certified Mail	I.C.I.O., Unit A1
<input type="checkbox"/>	Federal Express	Orofino, Idaho 83544
<input type="checkbox"/>	Fax	
<input type="checkbox"/>	Deputy Fax	
<input type="checkbox"/>	Hand Delivery	
<input type="checkbox"/>	Box	
<input checked="" type="checkbox"/>	U.S. Mail	Chuck Kovis
<input type="checkbox"/>	Certified Mail	P.O. Box 9292
<input type="checkbox"/>	Federal Express	Moscow, Idaho 83843
<input type="checkbox"/>	Facsimile	Facsimile: (208) 882-5379
<input type="checkbox"/>	Hand Delivery	
<input type="checkbox"/>	Box	

SIGNED: ROSE E. GEHRING, Clerk

by: Kathy Johnson, Deputy

Charles E. Kavis  
Attorney at Law  
312 S. Washington  
Post Office Box 9292  
Moscow, Idaho 83843  
Telephone: (208) 882-3939  
Fax: (208) 882-5379  
Idaho State Bar # 4700

Attorney for Defendant

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:33 O'CLOCK P.M.

MAR 09 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

CASE NO. CR-83-20158

MOTION TO WITHDRAW

COMES NOW, Charles E. Kavis, counsel of record for Defendant, MARK HENRY LANKFORD, and moves this Court for an order allowing him to withdraw as counsel of record for Mr. Lankford in this case. This motion is supported by an *Affidavit of Charles E. Kavis In Support of Motion to Withdraw.*

DATED this 9<sup>th</sup> day of March, 2010.

Charles E. Kavis  
Charles E. Kavis  
Attorney for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 9<sup>th</sup> day of March,  
2010, a true and correct copy of the foregoing  
instrument was mailed, by Regular U.S. Mail, to:

KIRK A. MACGREGOR  
IDAHO COUNTY PROSECUTOR  
P.O. BOX 463  
GRANGEVILLE, ID 83530  
FAX: (208) 983-3919

and

MARK LANKFORD  
I.C.I.O. UNIT A3  
HOSPITAL DRIVE NORTH #23  
OROFINO, ID 83544

By Charles E. Kovis  
Charles E. Kovis

IDAHO COUNTY DISTRICT COURT

FILED  
AT 3:35 O'CLOCK P.M.

MAR 09 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
Kathy Johnson DEPUTYDOCKETED  
ROSE E. GEHRINGIN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK H. LANKFORD,

Defendant.

CASE NO. CR-83-20158

ORDER GRANTING  
MOTION TO WITHDRAW

The Court having reviewed the *Motion To Withdraw* and *Affidavit of Charles E. Kavis in Support of Motion to Withdraw*, the records and files herein, and good cause appearing therefore,

**IT IS HEREBY ORDERED** that Charles E. Kavis is allowed to withdraw as attorney of record for the Defendant, Mr. Lankford.

DATED this 9<sup>th</sup> day of March, 2010.

BY ORDER OF THE COURT

ROSE E. GEHRING, Clerk

by: Kathy Johnson, Deputy

ORDER GRANTING  
MOTION TO WITHDRAW

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of March  
2010, true and correct copies of the foregoing  
instrument were faxed to:

KIRK A. MACGREGOR  
IDAHO COUNTY PROSECUTOR  
P.O. BOX 463  
GRANGEVILLE, ID 83530  
FAX: (208) 983-3919

CHARLES E KOVIS  
ATTORNEY AT LAW  
312 S WASHINGTON  
P O BOX 9292  
MOSCOW ID 83843  
FAX: (208) 882-5379

and

MARK LANKFORD  
I.C.I.O. UNIT A3  
HOSPITAL DRIVE NORTH #23  
OROFINO, ID 83544

ROSE E. GEHRING, Clerk

By

Kathy Johnson, Deputy  
(Deputy) Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT  
AT 3:43 FILED  
O'CLOCK P.M.

MAR 09 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kathy Johnson* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  Plaintiff,  vs.  Mark H. Lankford  Defendant.	Case No. CR 83-20158  ORDER RESCINDING ORDER FOR TRANSPORT AND RETURN
--	---

The defendant is currently incarcerated at the Idaho Correctional Institution, Orofino,  
Idaho;

IT IS HEREBY ORDERED that the previous order causing the above named  
defendant to be returned to Court for further proceedings is hereby rescinded. NO further  
proceedings are set at this time.

BY THE ORDER OF THE COURT

Dated this 9<sup>th</sup> day of March 2010.

ROSE E. GEHRING, CLERK

*Kathy Johnson*  
Kathy Johnson, Deputy



CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 3.9.10 to:

Inmate Placement, fax 327-7444  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
Kirk Macgregor, delivered to tray  
Chuck Kovis, mailed

*Tom Coltery, mailed*

ROSE E. GEHRING, Clerk of Court

by *Kathy Johnson*  
Kathy Johnson, Deputy Clerk

ORDER FOR TRANSPORT AND RETURN - 2

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:52 O'CLOCK P.M.

MAR 09 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kathy Johnson* DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

---

STATE OF IDAHO,	)	Case No. CR 83-20158
Plaintiff,	)	
vs.	)	
	)	ORDER APPOINTING COUNSEL
Mark H. Lankford,	)	
Defendant.	)	

---

TO: Thomas Callery

The above named Defendant, having requested the aid of counsel, and the Court being satisfied that said Defendant is a needy person entitled to appointment of counsel:

IT IS ORDERED that you are appointed to represent the Defendant in all matters pertaining to this action until relieved by Court Order.

The Defendant is incarcerated at the Idaho State Correctional Institution in Orofino, Idaho.

Dated: March 9, 2010

BY ORER OF THE COURT

ROSE E. GEHRING, CLERK

*Kathy Johnson*  
Kathy Johnson, Deputy

CERTIFICATE OF MAILING

Copy mailed to the following this 9<sup>th</sup> day of March 2010:

Kirk MacGregor, to tray

Charles Kovis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843

Thomas Callery  
Attorney at Law  
PO Box 854  
Lewiston, ID 83501

Idaho State Correctional Institution  
Attn: Mark Lankford, #20489  
Unit A1  
Hospital Drive North #23  
Orofino, ID 83544

ROSE E. GEHRING, CLERK

by

Kathy Johnson

Deputy

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:20 O'CLOCK P.M.

MAR 11 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
Kathy Johnson DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

---

STATE OF IDAHO,	)	
	)	Case No. CR 83-20158
Plaintiff,	)	
vs.	)	AMENDED
	)	ORDER APPOINTING COUNSEL
Mark H. Lankford,	)	
Defendant.	)	

---

TO: Gregory Dickison  
Attorney at Law  
PO Box 8846  
Moscow, ID 83843  
(866) 290-9361

The above named Defendant, having requested the aid of counsel, and the Court being satisfied that said Defendant is a needy person entitled to appointment of counsel:

IT IS ORDERED that you are appointed to represent the Defendant in all matters pertaining to this action until relieved by Court Order.

IT IS FURTHER ORDERED that the Order Appointing Thomas Callery filed on March 9, 2010 is hereby rescinded.

The Defendant is incarcerated at the Idaho State Correctional Institution in Orofino, Idaho.

BY ORDER OF THE COURT

Dated: March 11, 2010

ROSE E. GEHRING, CLERK

*Kathy Johnson*  
Kathy Johnson, Deputy

CERTIFICATE OF MAILING

Copy mailed to the following this 11th day of March 2010:

Kirk MacGregor, delivered to tray

Greg Dickison, delivered to tray

Idaho Correctional Institution, Unit A1  
Mark Lankford #20489  
Hospital Drive North #23  
Orofino, ID 83544

Thomas Callery  
Attorney at Law  
PO Box 854  
Lewiston, ID 83501

ROSE E. GEHRING, CLERK

by Kathy Johnson Deputy

DOCKETED

Charles E. Kovis  
Attorney at Law  
312 S. Washington  
Post Office Box 9292  
Moscow, Idaho 83843  
Telephone: (208) 882-3939  
Fax: (208) 882-5379  
Idaho State Bar # 4700

Attorney for Defendant

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:00 O'CLOCK P.M.

MAY 11 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  
Plaintiff,

vs.

MARK HENRY LANKFORD,  
Defendant.

CASE NO. CR-83-20158

**MOTION FOR ALLOWANCE OF  
ATTORNEY FEES AND COSTS**

COMES NOW, CHARLES E. KOVIS, former attorney for Mark Henry Lankford, and moves this court for an allowance of attorney fees and costs in this matter. This *Motion for Allowance of Attorney Fees and Costs* is supported by the affidavit of the undersigned submitted with this motion.

DATED this 24<sup>th</sup> day of May, 2010.



Charles E. Kovis  
Attorney for Defendant

MOTION FOR ALLOWANCE  
OF ATTORNEY FEES AND COSTS

ORIGINAL

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 10:47 O'CLOCK A.M.

MAY 28 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Rose E. Gehring* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

CASE NO. CR-83-20158

**ORDER FOR ALLOWANCE OF  
ATTORNEY FEES AND COSTS**

CHARLES E. KOVIS, having been duly appointed to represent the Defendant, Mark Henry Lankford, and having petitioned the Court for allowance of attorney fees and costs involved therein; the Court having reviewed the Motion filed by said attorney, and being fully advised of the premises, now enters the following order:

IT IS HEREBY ORDERED that the Clerk of Court of Idaho County pay unto Charles E. Kavis the following amount:

Attorney fees and costs

\$2,130.50

Dated this 28 day of May, 2009.

*John Bradbury*  
DISTRICT JUDGE

ORDER FOR ALLOWANCE OF  
ATTORNEY FEES AND COSTS

ORIGINAL

CLERK'S CERTIFICATE OF DELIVERY

I hereby certify that on the 28<sup>th</sup> day of May,  
2010, a true and correct copy of the *Order for*  
*Allowance of Attorney Fees and Costs* was  
delivered to:

IDAHO COUNTY CLERK  
320 WEST MAIN STREET  
IDAHO COUNTY COURTHOUSE  
GRANGEVILLE, ID 83530

and mailed to:

CHARLES E. KOVIS  
ATTORNEY AT LAW  
P.O. BOX 9292  
MOSCOW ID 83843

ROSE E. GEHRING, Clerk

Kathy Johnson  
(DEPUTY) CLERK



COURT MINUTES

CR-1983-0020158

State of Idaho vs. Mark Henry Lankford

Hearing type: Status Conference

Hearing date: 8/19/2010

Time: 2:49 pm

Judge: John Bradbury

Courtroom:

Court reporter: Keith Evans

Minutes Clerk: KATHYJ

Tape Number: D74

Defense Attorney: Gregory Dickison

Prosecutor: Attorney General

2:49 Court announces case

Defendant not present but represented by counsel

2:49 Dickison argues in support of motion.

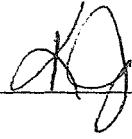
2:50 Dickison brief due, MacGregor brief due 10/7/10

2:51 Oral Argument 10/28/10 at 2pm

Do order of transport

2:52 recess

Signed:  \_\_\_\_\_, District Judge

Signed:  \_\_\_\_\_, Deputy Court Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:38 O'CLOCK P.M.

AUG 25 2010

DOCKETED

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
Kathy Johnson DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

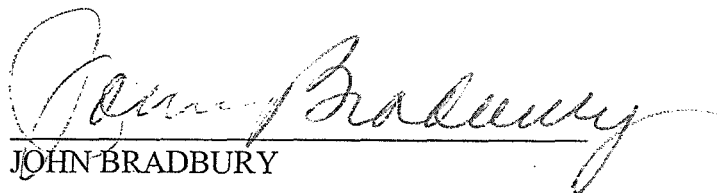
STATE OF IDAHO,  Plaintiff,  vs.  Mark Henry Lankford  Defendant.	Case No. 83-20158   ORDER FOR TRANSPORT AND RETURN
---	--

The defendant is currently incarcerated at the Idaho Correctional Institution, Orofino,  
Idaho;

IT IS HEREBY ORDERED that the Idaho County Sheriff's Department shall cause  
the above named defendant to be returned to Court for further proceedings on Thursday, October 28,  
2010, at the hour of 2:00 p.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State  
Department of Correction upon completion of hearing if so directed by the Court.

Dated this 25 day of August 2010.

  
JOHN BRADBURY

ORDER FOR TRANSPORT AND RETURN - 1

District Judge

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 8.25.10 to:

Inmate Placement, fax 327-7444 ~~7445~~  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O. faxed

ROSE, E. GEHRING, Clerk of Court

by Kathy Johnson  
Kathy Johnson, Deputy Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:57 O'CLOCK P.M.

SEP 29 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kathy Johnson* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  Plaintiff,  vs.  Mark Henry Lankford  Defendant.	Case No. CR 83-20158  <i>AMENDED</i> ORDER FOR TRANSPORT AND RETURN
---	---

The defendant is currently incarcerated at the Idaho Correctional Institution, Orofino, Idaho;

IT IS HEREBY ORDERED that the Idaho County Sheriff's Department shall cause the above named defendant to be returned to Court for further proceedings on Thursday, November 4, 2010, at the hour of 11:00 a.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 29 day of September 2010.

*John Bradbury*  
JOHN BRADBURY  
District Judge

ORDER FOR TRANSPORT AND RETURN - 1

CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 9.29.10 to:

Inmate Placement, fax 327-7445  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O., fax 476-4050 4407

ROSE E. GEHRING, Clerk of Court

by Kathy Johnson  
Kathy Johnson, Deputy Clerk

ORDER FOR TRANSPORT AND RETURN - 2

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 2:08 O'CLOCK P.M.

SEP 29 2010

DOCKETED

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kathleen Johnson* DEPUTY

GREGORY C. DICKISON, LAWYER  
IDAHO COUNTY PUBLIC DEFENDER  
POST OFFICE BOX 8846  
MOSCOW, IDAHO 83843  
TELEPHONE - (208) 882-4009  
FAX - 1-866-290-9404  
E-MAIL - GDICKISON@DICKISONLAWFIRM.COM  
ISB NO. 4406

DEFENSE COUNSEL

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT,  
IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant

Case No. CR 83-20158

MOTION FOR EXTENSION OF TIME

COMES NOW the defendant, Mark Henry Lankford, by and through his attorney of record, Gregory C. Dickison, and hereby moves this court for an extension of the time for the filing of the defendant's brief in support of his amended second motion for a new trial. Said brief is currently due on September 30, 2010. The defendant requests an extension to ~~November 5,~~ <sup>October 8, 2010</sup> 2010.

DATED this 29th day of September, 2010.

*GCD*  
\_\_\_\_\_  
Gregory C Dickison, Lawyer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29<sup>th</sup> day of September  
2010, a true and correct copy of the foregoing document was served upon the following by:

KIRK A. MACGREGOR  
Idaho County Prosecuting Attorney  
416 W. Main Street  
Grangeville, Idaho 83530

☐ U.S. Mail  
☐ Overnight Mail  
☒ E-Mail  
☐ Hand Delivery

  
\_\_\_\_\_  
Gregory C. Dickison, Lawyer

DOCKETED

IDAHO COUNTY DISTRICT COURT  
AT 2:45 FILED 2 P.M.  
O'CLOCK

SEP 29 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kathy Phoenix* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT,  
IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant

Case No. CR 83-20158

ORDER FOR EXTENSION OF TIME

The motion of the defendant for an extension of the time for the filing of the defendant's brief in support of his amended second motion for a new trial having come before this court, the court being fully advised of the premises, and good cause appearing therefore;

IT IS HEREBY ORDERED that the defendant's brief in support of his amended second motion for a new trial shall be filed with this court on or before <sup>October 8, 2010</sup> ~~November 5, 2010~~.

DATED this 29 day of September, 2010.

*John Bradbury*  
John Bradbury, District Judge



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29<sup>th</sup> day of September, 2010, a true and correct copy of the foregoing document was served upon the following by:

KIRK A. MACGREGOR  
Idaho County Prosecuting Attorney  
416 W. Main Street  
Grangeville, Idaho 83530

☐ U.S. Mail  
☐ Overnight Mail  
☐ E-Mail  
☒ Hand Delivery

GREGORY C. DICKISON  
Idaho County Public Defender  
PO Box 8846  
Moscow, ID 83843

☐ U.S. Mail  
☐ Overnight Mail  
☐ E-Mail  
☒ Hand Delivery

ROSE E. GEHRING, Clerk  
*Kathy Johnson*  
Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
AT 9:34 FILED A.M.  
O'CLOCK

OCT 27 2010

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kelly Johnson* DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

Mark H. Lankford

Defendant.

Case No. CR 1983-20158

*Amended*  
ORDER FOR TRANSPORT  
AND RETURN

The defendant is currently incarcerated at the Idaho Correctional Institution, Orofino, Idaho;

IT IS HEREBY ORDERED that the Idaho County Sheriff's Department shall cause the above named defendant to be returned to Court for further proceedings on Thursday, January 13, 2011, at the hour of 10:00 a.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 27 day of October, 2010.

*John Bradbury*

JOHN BRADBURY  
District Judge

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 10.27.10 to:

Inmate Placement, fax 327-7445  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O., fax 476-4407 476-4050

ROSE E. GEHRING, Clerk of Court

by Kathy Johnson  
Kathy Johnson, Deputy Clerk

ORDER FOR TRANSPORT AND RETURN - 2

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 1:42 O'CLOCK P.M.

JAN 03 2011

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kathy Johnson* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO

State of Idaho )  
Plaintiff or State )  
v. ) CASE NO. CR 83-20158  
Mark H. Lankford )  
Defendant )

ORDER REGARDING DISQUALIFICATION OF JUDGE

☒ The undersigned Judge voluntarily disqualifies himself/herself from presiding over this case.

☐ The undersigned Judge disqualifies himself for the reason that venue has been changed from Idaho County.

☐ Plaintiff ☐ Defendant has moved to disqualify the undersigned Judge under IRCP § 40.

The motion is ☐ with cause ☐ without cause.

The motion is ☐ granted ☐ denied.

☐ State ☐ Defendant has moved to disqualify the undersigned Judge under ICR § 25.

The motion is ☐ with cause ☐ without cause.

The motion is ☐ granted ☐ denied

January 3, 2011  
Date

*[Signature]*  
Judge

CERTIFICATE OF MAILING

I hereby certify that true copies of the foregoing Order Regarding Disqualification of Judge were mailed this 3rd day of January, 20 11, to:

Kirk MacGregor, delivered to tray  
Greg Dickison, delivered to tray  
Honorable Jeff Brudie, faxed

ROSE E. GEHRING, Clerk

By Kathy Johnson  
Deputy

Order Regarding Disqualification

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 1:03 O'CLOCK P.M.

JAN 04 2011

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
*Kathy Johnson* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK H. LANKFORD,

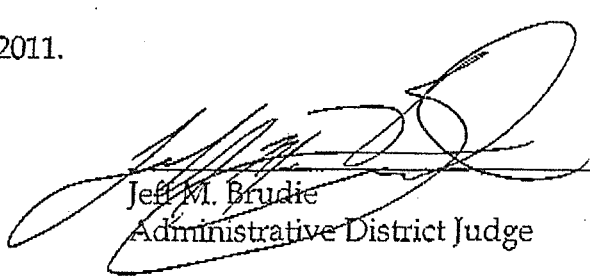
Defendant.

Case No. CR 83-20158

ORDER ASSIGNING JUDGE

It is ORDERED that Judge Brudie whose chambers are located in Lewiston, Idaho,  
is assigned to preside over all further proceedings in the above-entitled matter.

DATED this 4 day of January 2011.

  
Jeff M. Brudie  
Administrative District Judge

CERTIFICATE OF SERVICE

I do hereby certify that a full, true, complete  
and correct copy of the foregoing  
ORDER ASSIGNING JUDGE was delivered to:

Kirk MacGregor, delivered to tray  
Greg Dickison, delivered to tray

on this 4<sup>th</sup> day of January 2011.

ROSE E. GEHRING, Clerk

Kathy Johnson  
Deputy Clerk

## COURT MINUTES

CR-1983-0020158

State of Idaho vs. Mark Henry Lankford

Hearing type: Scheduling

Hearing date: 2/4/2011

Time: 1:32 pm

Judge: Jeff Brudie

Courtroom:

Court reporter: Keith Evans

Minutes Clerk: KATHYJ

Tape Number: D77

Defense Attorney: Gregory Dickison

Prosecutor: Attorney General

1:43 Clerk announces case

Court appears telephonically

Counsel both in court room

Court gives synopsis of matter

1:44 Counsel both discuss with court re: timing of hearing and setting dates

Hearing set for 3/1/11 at 3pm

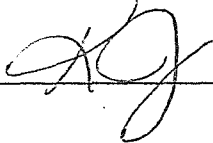
1:45 MacGregor addresses court

Court addresses counsel

1:46 Dickison to present order of transport

1:46 Recess

Signed: , District Judge

Signed: , Deputy Court Clerk



IDAHO COUNTY DISTRICT COURT  
FILED  
AT 8:38 O'CLOCK A.M.

FEB 15 2011

KATHY MACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

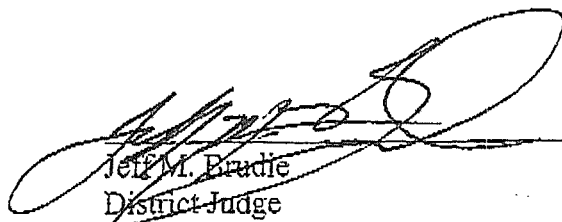
STATE OF IDAHO,  Plaintiff,  vs.  Mark Henry Lankford  Defendant.	Case No. CR 83-20158   ORDER FOR TRANSPORT AND RETURN
---	---

The defendant is currently incarcerated at the I.C.I., Orofino, Idaho;

IT IS HEREBY ORDERED that the Idaho County Sheriff's Department shall cause the above named defendant to be returned to Court for further proceedings on Tuesday, March 1, 2011, at the hour of 3:00 p.m. in the District Courtroom of the Idaho Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 14 day of February 2011.

  
Jeff M. Bradie  
District Judge

ORDER FOR TRANSPORT AND RETURN - 1

CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 2-15-11 to:

Inmate Placement, fax 327-7445  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O., fax

Kathy M. Ackerman, Clerk

by Kathy Johnson  
Deputy Clerk

ORDER FOR TRANSPORT AND RETURN - 2

FEB 17 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

Mark Henry Lankford  
Full Name/Prisoner Name  
20489 ICIO A1  
381 W. Hospital Dr.  
Crofton, Idaho 83544-9034  
Complete Mailing Address

Plaintiff/Defendant  
(circle one)

IN THE DISTRICT COURT OF THE SECOND

JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY  
OF IDAHO

State of Idaho )  
Plaintiff/Petitioner, )  
(Full name and prisoner number. )  
vs. )  
Mark Henry Lankford )  
 )  
 )  
Defendant/Respondent(s), )  
(Full name(s). Do not use et. al.) )  
 )

CASE NO. CR-83-20158

MOTION FOR SUBSTITUTE

COUNSEL

Mark Henry

COMES NOW, Lankford, Plaintiff/Defendant (circle one) in the above  
entitled matter, petitioning this Court for Substitution of Counsel.

Mr. Lankford asserts that his appointed attorney, Gregory  
C. Dickison, falls below the standard of effective representation  
guaranteed by the 6th Amendment to the CONSTITUTION of the UNITED  
STATES, SUPPORTED BY THE accompanying AFFIDAVIT.

BASED UPON THE FOREGOING, Mr. Lankford respectfully requests

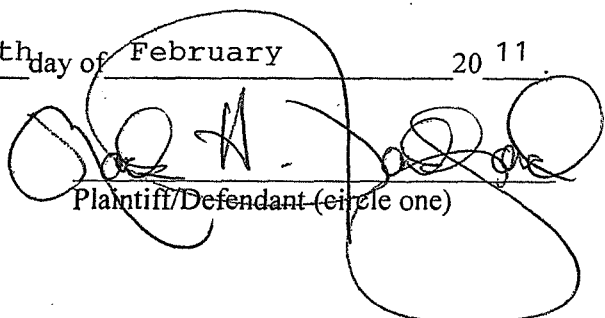
Motion for Substitute -1

Counsel

-pg. Page 1 of 2

this Court grant this Motion and appoint effective Counsel,  
in the interest of justice, in this very serious legal matter.  
If the Court so desires, we request a hearing to determine the  
reasons why such a substitution should take place.

Respectfully submitted this 15th day of February, 2011.

  
Plaintiff/Defendant (circle one)

**CERTIFICATE OF MAILING**

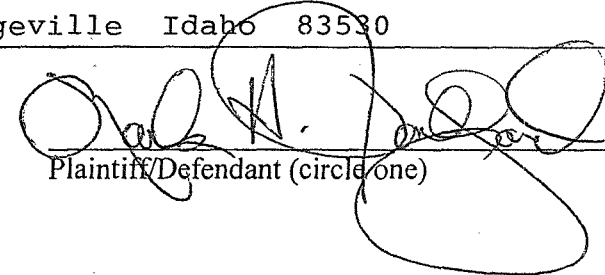
I HEREBY CERTIFY that on the 15th day of February, 2011, I  
mailed a true and correct copy of the above and foregoing document via  
prison mail system for processing to the U.S. mail system to:

KIRK A MACGREGOR

Idaho County Prosecutor

PO Box 463

Grangeville Idaho 83530

  
Plaintiff/Defendant (circle one)

Motion for Substitute \_\_\_\_\_ Page 2 of 2  
Counsel. \_\_\_\_\_ -pg. \_\_\_\_\_

Revised 10/24/05

## COURT MINUTES

CR-1983-0020158

State of Idaho vs. Mark Henry Lankford

Hearing type: Motion

Hearing date: 3/1/2011

Time: 2:34 pm

Judge: Jeff Brudie

Courtroom:

Court reporter: Keith Evans

Minutes Clerk: KATHYJ

Tape Number: D77

Defense Attorney: Gregory Dickison

Prosecutor: Attorney General

2:58 Court announces case

Defendant present with counsel

Court gives synopsis of case and motions

2:59 Dickison addresses court re: motion for substitution of counsel

MacGregor responds to court

3:00 Court addresses motion for substitution of counsel

3:00 Lankford stands on petition

Dickison addresses court re: motion

3:02 Court responds

Dickison responds to the court

3:03 Court questions Dickison

Dickison responds

Court questions Dickison

3:05 MacGregor addresses court re: motion for substitute counsel and argues in opposition of said motion

3:09 Court questions Dickison

Dickison responds

Court questions Dickison further

3:10 Dickison responds

3:11 Court responds

3:11 Lankford addresses court

3:15 Court responds

3:17 Court questions Dickison

Dickison responds and moves for continuance of hearing

3:18 Court responds and reviews Rule for new hearing

3:19 Court denies motion for substitute counsel

Court grants continuance motion for new trial and will consider making funds available for investigator

3:20 Court will not set matter for further hearing at this time. Court does authorize funds for investigator, Dickison to provide estimate of cost and time to the court

3:21 Dickison addresses court re: Rule 35 motion

3:22 recess

Signed: , District Judge

Signed: , Deputy Court Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 11:00 O'CLOCK P. M.

APR - 5 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

Mark Henry Lankford  
Full Name/Prisoner Name  
20489 ICIO A1  
381 West Hospital Drive  
Groff, Idaho 83544-9034  
Complete Mailing Address  
Plaintiff/Defendant  
(circle one)

IN THE DISTRICT COURT OF THE SECOND JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO	)	
Plaintiff/Petitioner,	)	CASE NO. <u>CR83-20158</u>
(Full name and prisoner number.	)	
vs.	)	Second Amended Petition
Mark Henry Lankford	)	for Second Motion for
	)	New Trial
pro se	)	
Defendant/Respondent(s),	)	
(Full name(s). Do not use et. al.)	)	

Mark Henry  
COMES NOW, Lankford, Plaintiff/Defendant (circle one) in the above  
entitled matter,

filing this Petition, pro se, as attorney Greg Dickison has stated  
in open Court that he cannot be a "zealous advocate" in my behalf.

This Petition is a response to the State's Brief filed 23  
December 2009, with added elements due to intervening facts.

FACTUAL HISTORY

2nd Amended Ptn-2nd Mtn-Nw Trl. -1

Mark Henry Lankford (Defendant), filed Second Motion for New Trial on 26 October 2009, after documents were brought to light constituting newly discovered evidence. The State filed its Brief 23 December 2009. Subsequently, further information has been brought to the fore, resulting in various filings, which includes an Affidavit filed with this Court, by Bryan S. Lankford, depicting felonious behavior by the State and various others, all designed to coerce illegal, perjurious testimony from Bryan and Lane F. Thomas.

#### ISSUES

1. Due to the affidavit filed by Bryan S. Lankford, is a new trial mandated under Idaho Code 19-2406(7)?
2. Has the State forfeited its right to oppose a new trial by standing on the assertion that there was no recantation and that Bryan "never argues that he was requested or forced by the State to testify untruthfully"?
3. Has the State (Kirk MacGregor, Dennis Albers, et al...) so egregiously engaged in felonies and misconduct as to warrant removal from this legal matter and be referred for criminal charges.

#### ARGUMENT

Under Idaho Code 19-2406(7), a new trial is warranted when newly discovered evidence is material to the defendant. This is manifestly found in this instance. A new trial is mandated in

Revised 10/24/05



light of the facts, that Bryan S. Lankford and Lane F. Thomas were forced, either through threat of death, bribery or other forms of coercion, to testify falsely, deceptively and with full knowledge that this was perjury, during the trial of Defendant. Bryan's recantation is grounds for a new trial, as it renders the verdict invalid. Recanted testimony, which is found here, is a form of newly discovered evidence; STATE V. LANKFORD, 116 Idaho 860, 781 P.2d 197 (1989) cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990). Also, LANKFORD V. ARAVE, 468 F. 3d 578 (9th Cir. 2006), cert. denied, 128 S. Ct. 206, 169 L. Ed. 2d 246 (2007).

During the February 2008 trial, after the State had rested, a motion for acquittal was made (see Memorandum in Support-transcript pages 17-18). Judge Bradbury denied this motion and stated, most importantly for these purposes, "I have to say that if it were just Bryan Lankford this would be a lot tougher decision. But with the testimony of Lane Thomas I find it much easier to deny the motion." (lines 9-13)

Notably absent from this statement was any mention of evidence, which the Judge seemed to believe did not exist. Now that it has been brought to light that the State had engaged<sup>in</sup> subornation of perjury, threats, bribery, etc..., it renders the verdict even less persuasive and unworthy of confidence. The entire trial was tainted by the criminal acts of the State, mandating a new trial. This would be in the "interest of justice" at its most meritorious. Absent the perjury of Bryan Lankford and Lane Thomas, which was

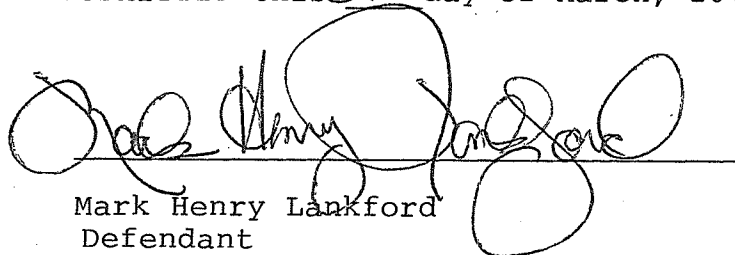
illegally obtained and criminally injected into the trial, a certain acquittal would have resulted. In fact, without these fabricated renditions, the State would not have had a case to pursue.

Given the allegations against the State, which should carry weight with this Court, the State should be recused from this matter. In the State's Brief, MacGregor argues that, "Most importantly, regarding all the allegations made by Bryan Lankford, he never once states that he testified untruthfully. He also never argues that he was requested or forced by the State to testify untruthfully." (State's Brief, Page 3, lines 3-5.) This has now been proven false and, most importantly, disallows the State from opposing this Motion for New Trial. The State has been "hoisted upon its own petard". The State has acted without good faith for the entire legal charade now nearing 29 years.

The State should be removed ~~from~~ this matter and referred for criminal charges on the Court's motion.

BASED UPON THE FOREGOING, The Defendant, Mark H. Lankford, respectfully submits that a new trial is required in the interest of justice. Mr. Lankford respectfully request a hearing to submit further evidence and testimony in support of this Motion, and leave to submit supplemental briefing as needed.

RESPECTFULLY SUBMITTED this <sup>31<sup>st</sup></sup> day of March, 2011.



Mark Henry Lankford  
Defendant

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Plaintiff/Defendant (circle one)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 4th day of March, 2011, I  
mailed a true and correct copy of the foregoing document via  
prison mail system for processing to the U.S. mail system to:

Kirk A MacGregor

Idaho County Prosecuting Attorney

PO Box 463

Grangeville Idaho 83500

Mark Henry Lankford

\_\_\_\_\_  
Plaintiff/Defendant (circle one)

2nd Amended Ptn=2nd Mtn-Nw Tr1

Page 5 of (5)

\_\_\_\_\_  
-Pg.\_\_\_\_

Revised 10/24/05

135

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 11:01 O'CLOCK A.M.

JUL 15 2011

Mark Henry Lankford

Full Name/Prisoner Name

20489 ICIO A1

381 W Hospital Drive

Orfino Idaho 83544-9034  
Complete Mailing Address

KATHY M. ACKERMAN

CLERK OF DISTRICT COURT  
IDAHO COUNTY

Plaintiff/Defendant  
(circle one)

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

<u>STATE OF IDAHO</u>	)	
Plaintiff/Petitioner,	)	CASE NO. <u>CR-83-20158</u>
(Full name and prisoner number.	)	
	)	
vs.	)	<u>DEFENDANT'S MOTION</u>
	)	<u>TO RECUSE JUDGE</u>
	)	<u>JEFF BRUDIE, FOR</u>
	)	<u>CAUSE</u>
<u>MARK HENRY LANKFORD</u>	)	
Defendant/Respondent(s),	)	
(Full name(s). Do not use et. al.)	)	
	)	

COMES NOW, Mark Henry Lankford, Plaintiff/Defendant (circle one) in the above  
entitled matter, filing pro se, moving to have Judge Jeff Brudie  
recused/removed from this legal matter, for cause. It has  
come to the attention of the Defendant, through his attorney  
of record, Greg Dickison (among others), that Judge Brudie's  
spouse, one Julie Brudie, was employed for several years  
with the Federal Defender's Office.

Motion-Brudie recusal -1

Mark Henry Lankford/pro se -pg. 1 of 3

Revised 10/24/05

136

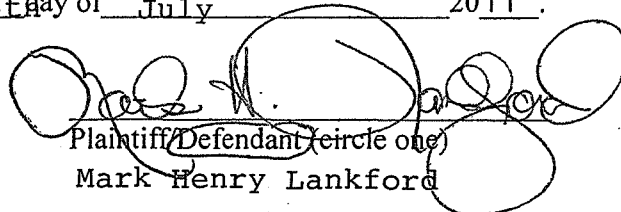
This Federal Defender's Office, under the supervision  
of Joan M. Fisher, now stands accused of coercing and coaching  
two alleged witnesses, Bryan Stuart Lankford and Lane F. Thomas.  
Julie Brudie was employed at said office during the time  
in question and for many years while this office represented  
Bryan S. Lankford.

Under the Judicial Canons, this is more than enough  
cause for recusal/removal of Jeff Brudie from this matter,  
as even the appearance of impropriety is not to be tolerated.  
Impartiality is the necessary ingredient in this system,  
as a jurist sits on the bench as a moderator/referee, not  
a biased participant. Dickison's assertion that this legal  
matter, throughout its long history, "probably made some inter-  
esting dinner conversation in the Brudie household", while  
Julie Brudie worked for the codefendant, renders Judge Brudie's  
impartiality and fairness very suspect.

Add to this Judge Brudie's denial of Lankford's Motion  
for Substitute Counsel, even after Dickison agreed with the  
Motion and stated he could NOT be a zealous advocate for  
Lankford. This smacks of bias at its worst and gives Lankford  
no expectation of fairness from this jurist, on any level  
and at any time (which Lankford has experienced from the  
Idaho judges throughout the pendency of his legal matter.)

Motion-Brudie recusal -pg. 2

For the aforementioned reasons, Judge Jeff Brudie  
should recuse/disqualify himself from this legal matter.  
He actually appointed himself to this case, which heightens  
the level of questioning, going to motive. This case should be  
overseen by a Judge outside of the 2nd Judicial District  
and with a different prosecutor, as Kirk MacGregor is accused  
of a plethora of crimes concerning this legal matter.  
Respectfully submitted this 14th day of July, 2011.

  
Plaintiff/Defendant (circle one)  
Mark Henry Lankford

**CERTIFICATE OF MAILING**

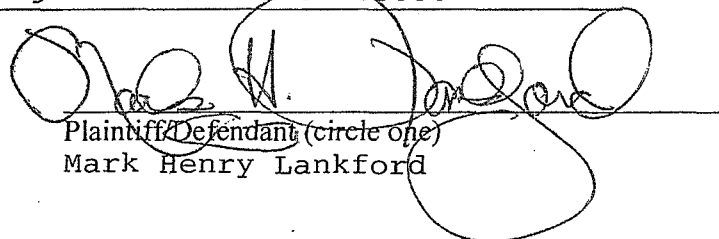
I HEREBY CERTIFY that on the 14th day of July, 2011, I  
mailed a true and correct copy of the foregoing instrument via  
prison mail system for processing to the U.S. mail system to:

KIRK A MACGREGOR IDAHO COUNTY PROSECUTOR

416 W Main

PO Box 463

Grangeville Idaho 83530

  
Plaintiff/Defendant (circle one)  
Mark Henry Lankford

Motion-Brudie recusal -pg. 3

JUL 08 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy M. Ackerman*

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

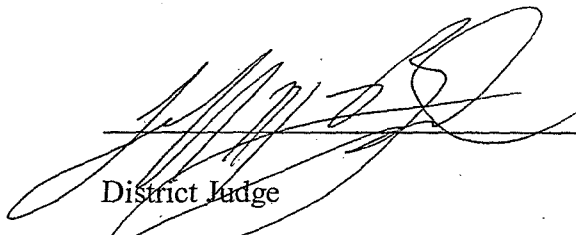
STATE OF IDAHO,  Plaintiff,  vs.  Mark H. Lankford,  Defendant.	Case No. CR 83-20158   ORDER FOR TRANSPORT AND RETURN
---	---

The defendant is currently incarcerated at the Idaho Correctional Institution, Orofino, Idaho;

IT IS HEREBY ORDERED that the Idaho County Sheriff's Department shall cause the above named defendant to be returned to Court for further proceedings on Monday, August 1, 2011, at the hour of 9:00 a.m. in the District Courtroom of the Idaho County Courthouse, Grangeville, Idaho.

IT IS FURTHER ORDERED that the defendant is to be returned to the Idaho State Department of Correction upon completion of hearing if so directed by the Court.

Dated this 7 day of July 2011.

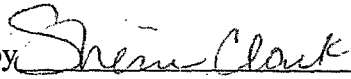
  
District Judge

CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 7-8-11 to:

Inmate Placement, fax 327-7445  
Idaho County Sheriff, delivered to tray  
Idaho County Jailer, delivered to tray  
I.C.I.O. , fax 476-4407

Kathy M. Ackerman, Clerk

by   
Deputy Clerk





JUL 18 2011 3:32PM DISTRICT COURT  
TO IDAHO COUN

NO. 8437 P. 1/2

DOCKETED

IDAHO COUNTY DISTRICT COURT  
AT 7:44 FILED  
O C C L O C K P . M.

JUL 18 2011

KATHY M ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy Ackerman* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

v.

MARK H. LANKFORD,

Defendant.

CASE NO. CR 83-20158

ORDER RESCINDING  
TRANSPORT ORDER

IT IS FURTHER ORDERED that the Transport Order entered on July 7, 2011, be rescinded. Defendant is to remain in the custody of the Idaho State Department of Correction until further order of the Court.

DATED this 18 day of July 2011.

*Jeff M. Brudie*  
JEFF M. BRUDIE - District Judge

ORDER RESCINDING  
TRANSPORT ORDER

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER RESCINDING TRANSPORT ORDER was faxed or

X hand delivered, by the undersigned this 18<sup>th</sup> day of July 2011, to:

Inmate Placement, fax 327-7445

Idaho County Sheriff, delivered to tray

Idaho County Jailer, delivered to tray

I.C.I.O., fax 476-4407

KATHY M. ACKERMAN

CLERK

By:

Kathy Johnson  
Deputy

ORDER RESCINDING  
TRANSPORT ORDER

IDAHO COUNTY DISTRICT COURT  
AT 3:05 FILED  
O'CLOCK P.M.

JUL 18 2011

DOCKETED

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy Johnson*  
Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

v.

MARK H. LANKFORD,

Defendant.

CASE NO. CR 83-20158

ORDER REGARDING DISQUALIFICATION OF JUDGE

☒ The undersigned Judge voluntarily disqualifies himself from presiding over this case.

☐ Plaintiff ☐ Defendant has moved to disqualify the undersigned Judge under IRCP § 40.

The motion is ☐ with cause ☐ without cause.

The motion is ☐ granted ☐ denied.

☐ State ☒ Defendant has moved to disqualify the undersigned Judge under ICR § 25.

The motion is ☒ with cause ☐ without cause.

The motion is ☐ granted ☒ denied

7/18/11  
Date

*[Signature]*  
Judge

CERTIFICATE OF MAILING

I hereby certify that true copies of the foregoing Order Regarding Disqualification of Judge were delivered this 18th day of July, 2011, to:

Kirk MacGregor  
Greg Dickison

KATHY M. ACKERMAN, Clerk  
By *Kathy Johnson*  
Deputy

Order Regarding Disqualification

1

143

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:05 O'CLOCK P.M.

JUL 18 2011

KAT-Y M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  
Plaintiff,

vs.

MARK H. LANKFORD,  
Defendant.

Case No. CR 83-20158

ORDER ASSIGNING JUDGE

It is ORDERED that Judge Stegner, whose chambers are located in Moscow, Idaho, is assigned to preside over all further proceedings in the above-entitled matter.

DATED this 18 day of July 2011.

  
Jeff M. Bruchie  
Administrative District Judge

**CERTIFICATE OF SERVICE**

I do hereby certify that a full, true, complete  
and correct copy of the foregoing  
ORDER ASSIGNING JUDGE was delivered to:

Kirk MacGregor  
Greg Dickision

The Hon John Stegner  
Moscow ID

on this 18<sup>th</sup> day of July 2011.

KATHY M. ACKERMAN, Clerk

Kathy Johnson  
Deputy Clerk

DOCKETED

AUG 31 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy M. Ackerman*  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR-1983-20158

ORDER SETTING HEARING

It is ORDERED that hearing of the defendant's Amended Second Motion for New Trial is scheduled to be conducted commencing at 1:30 P.M. on October 11, 2011, at the Idaho County Courthouse in Grangeville, Idaho.

DATED this 31<sup>st</sup> day of August 2011.

*John R. Stegner*  
John R. Stegner  
District Judge

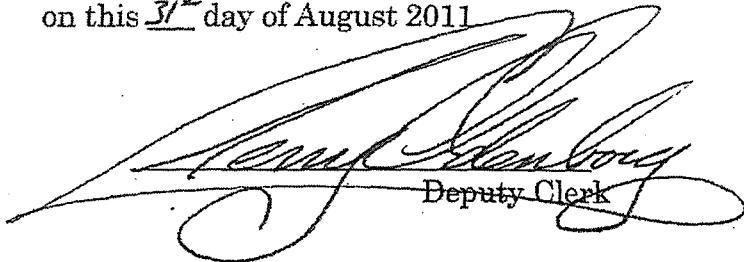
## CERTIFICATE OF SERVICE

I do hereby certify that a full,  
true and correct copy of the foregoing  
**ORDER SETTING HEARING**  
was sent by PDF email to:

Gregory C. Dickison  
Attorney for Defendant  
[gdickison@dickisonlawfirm.com](mailto:gdickison@dickisonlawfirm.com)

Kirk MacGregor  
Prosecuting Attorney  
[kmacgregor@Connectwireless.us](mailto:kmacgregor@Connectwireless.us)

on this 31<sup>st</sup> day of August 2011



Deputy Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:20 O'CLOCK P.M.

AUG 31 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy M. Ackerman*  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	
	)	Case No. CR-1983-20158
Plaintiff,	)	
	)	ORDER FOR TRANSPORT
vs.	)	AND RETURN
	)	
MARK HENRY LANKFORD,	)	
	)	
Defendant.	)	
_____	)	

The defendant is currently incarcerated at the Idaho Correctional Institution in Orofino, Idaho.

It is ORDERED that the Idaho County Sheriff's Department shall cause the above named defendant to be returned to Idaho County for further proceedings on Tuesday, October 11, 2011, at 1:30 P.M. in the District Courtroom of the Idaho County Courthouse in Grangeville, Idaho.

It is FURTHER ORDERED that the defendant be returned to the Idaho Correctional Institution in Orofino, Idaho upon completion of the hearing, if so directed by the Court.

DATED this 31<sup>st</sup> day of August 2011.

*John R. Stegner*  
John R. Stegner  
District Judge

ORDER FOR TRANSPORT AND RETURN - 1



## CERTIFICATE OF SERVICE

I do hereby certify that a full,  
true and correct copy of the foregoing  
**ORDER FOR TRANSPORT AND RETURN**  
was sent by PDF email to:

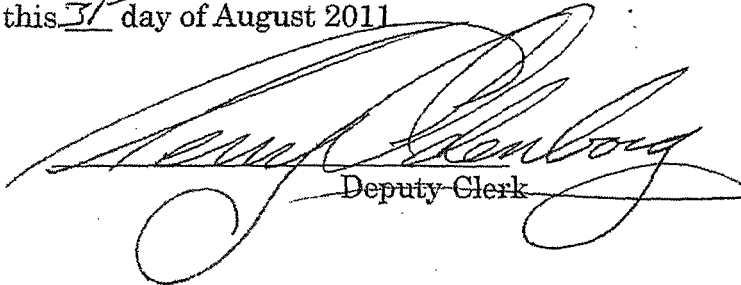
Gregory C. Dickison  
Attorney for Defendant  
[gdickison@dickisonlawfirm.com](mailto:gdickison@dickisonlawfirm.com)

Kirk MacGregor  
Prosecuting Attorney  
[kmacgregor@Connectwireless.us](mailto:kmacgregor@Connectwireless.us)

Central Records  
Idaho State Board of Correction  
[centralrecords@idoc.idaho.gov](mailto:centralrecords@idoc.idaho.gov)

Idaho County Sheriff's Department  
[rick\\_shira@yahoo.com](mailto:rick_shira@yahoo.com)

on this 3<sup>rd</sup> day of August 2011



Deputy Clerk

OCT 04 2011

Mark Henry Lankford  
Full Name/Prisoner Name  
#20489 ICIO A1  
381 West Hospital Dr  
Orofino Idaho 83544-9034  
Complete Mailing Address

DOCKETED

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

Plaintiff/Defendant  
(circle one)

IN THE DISTRICT COURT OF THE SECOND JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO

Plaintiff/Petitioner,  
(Full name and prisoner number.)

vs.

MARK HENRY LANKEORD

PRO SE

Defendant/Respondent(s),  
(Full name(s). Do not use et. al.)

CASE NO. CR83-20158

Defendant's Second  
Motion for Substitution  
of Counsel

Mark Henry  
COMES NOW, Lankford, Plaintiff/Defendant (circle one) in the above  
entitled matter, filing this Motion for Substitution of Counsel,  
for the second time. Greg Dickison, appointed counsel, has  
stated in open court that he cannot be a "zealous advocate"  
in this matter and has proven it over the past months. Dickison  
asserted at prior hearing, to Defendant, that he would file a  
Motion to Withdraw, but which he DID NOT accomplish. When asked

2nd Motion-Substitute  
Counsel

- 1 of 3

-pg-

ORIGINAL

why he did not make this Motion, Dickison stated that "I kinda did." There was no "kinda" to it. Dickison then asked for the Defendant's copy of the first Motion for Substitution and stated he would return said Motion, which he did not. This is theft.

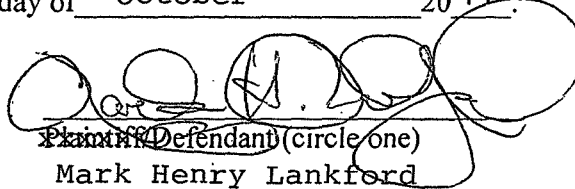
Dickison is a WITNESS in this matter, having Bryan Lankford recant to him on the telephone. Brad Andrews, Bar Counsel of the Idaho State Bar, has advised that, in such a conflict, wherein Defendant would need to have his Counsel take the stand as a witness, the attorney may only proceed ethically after obtaining consent from Defendant AND Court approval waiving any potential conflict. Such consent is NOT GIVEN by this Defendant!

Further, since the prior hearing of March 1, 2011, when Judge Brudie approved funds for an investigator in this matter, Dickison has failed to give Defendant ANY information concerning the progress of any investigation and has not spoken to Defendant since March. Defendant would not even know the date of this October 11, 2011 hearing if not for a friend that is also an attorney. Dickison has stated to Defendant that even if a witness was beaten by MacGregor/Albers to secure perjured testimony, this is not grounds for a New Trial. Dickison is completely ignorant of the law or has an unacceptable relationship with MacGregor/ Albers. A COMPLAINT will be soon filed, by Defendant, to the Idaho State Bar against Dickison, seeking his disbarment. This would be an appropriate

sanction, citing Idaho Rules of Professional Conduct Rules 1.1,  
1.2, 1.3, 1.4, and especially, Rule 3.7.

For the above stated reasons, Greg Dickison should not be  
allowed to remain as Counsel in this matter. Defendant has zero  
confidence in this attorney, as should the Court. Substitute  
Counsel should be assigned apace and this is herein requested.

Respectfully submitted this 3rd day of October, 20 11.

  
~~Plaintiff~~ Defendant (circle one)  
Mark Henry Lankford

**CERTIFICATE OF MAILING**

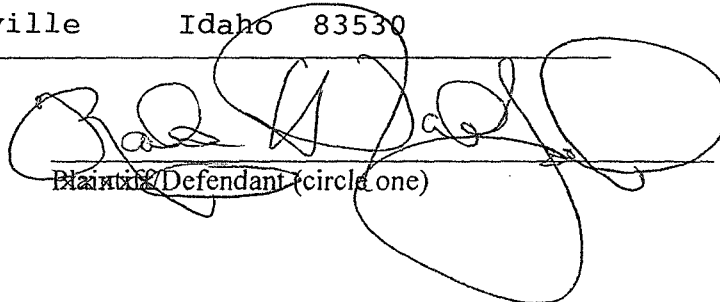
I HEREBY CERTIFY that on the 3rd day of October, 20 11, I  
mailed a true and correct copy of the foregoing document via  
prison mail system for processing to the U.S. mail system to:

Kirk A MacGregor

Idaho County Prosecuting Attorney

PO Box 463

Grangeville Idaho 83530

  
~~Plaintiff~~ Defendant (circle one)

IDAHO COUNTY DISTRICT COURT  
AT 1:33 FILED  
O'CLOCK P.M.

OCT 06 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

GREGORY C. DICKISON, LAWYER  
IDAHO COUNTY PUBLIC DEFENDER  
POST OFFICE Box 8846  
MOSCOW, IDAHO 83843  
TELEPHONE - 1-866-290-9361  
FAX - 1-866-290-9404  
E-MAIL - GDICKISON@DICKISONLAWFIRM.COM  
ISB NO. 4406

DEFENSE COUNSEL

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT,  
IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant

Case No. CR 83-20158

MOTION FOR PRODUCTION OF  
WITNESS

COMES NOW the defendant, Mark Henry Lankford, by and through his attorney of record, Gregory C. Dickison, and hereby moves this court to order the transport of Bryan Stuart Lankford, IDOC No. 20488, to the hearing of the defendant's second motion for new trial at the Idaho County Courthouse in Grangeville, Idaho, on October 11, 2011. Said motion is made because Bryan Stuart Lankford has recanted the testimony he gave at the trial of this matter, as shown in the documents on file, and his testimony is necessary for the defendant to show why his second motion for a new trial should be granted.

Bryan Stuart Lankford is in the custody of the Idaho Department of Correction being held at the Idaho Maximum Security Institution in Boise, Idaho.

DATED this 3rd day of October, 2011.  
Gregory C Dickison, Lawyer

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of October  
2011, a true and correct copy of the foregoing document was served upon the following by:

KIRK A. MACGREGOR  
Idaho County Prosecuting Attorney  
416 W. Main Street  
Grangeville, Idaho 83530

☐ U.S. Mail  
☒ E-Mail  
☐ Fax  
☐ Hand Delivery

  
Gregory C. Dickison, Lawyer

1 GREGORY C. DICKISON, LAWYER  
2 IDAHO COUNTY PUBLIC DEFENDER  
3 POST OFFICE BOX 8846  
4 MOSCOW, IDAHO 83843  
5 TELEPHONE - 1-866-290-9361  
6 FAX - 1-866-290-9404  
7 E-MAIL - GDICKISON@DICKISONLAWFIRM.COM  
8 ISB NO. 4406

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:56 P.M. O'CLOCK

OCT - 7 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

9 DEFENSE COUNSEL

10 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT,  
11 IN AND FOR THE COUNTY OF IDAHO

12 STATE OF IDAHO,

13 Plaintiff,

14 vs.

15 MARK HENRY LANKFORD,

16 Defendant

Case No. CR 83-20158

MOTION TO WITHDRAW

17 COMES NOW Gregory C. Dickison, court appointed counsel to the defendant, Mark  
18 Henry Lankford, and hereby moves this court for permission to withdraw from further  
19 representation of the defendant in this matter.

20 I was appointed as defense counsel after trial counsel Kovis and Hallin filed a second  
21 motion for a new trial and then withdrew. The defendant subsequently filed an amended second  
22 motion for new trial, an affidavit in support of motion for substitute counsel, a second amended  
23 petition for second motion for new trial with a supporting affidavit, a motion to recuse Judge Jeff  
24 Brudie for cause, and most recently a second motion for substitution of counsel. The defendant  
25 filed these motions without consulting with me, and has essentially been acting as his own  
26 counsel during the pendency of this motion.

27 As defense counsel I deny that I have performed in an incompetent or ineffective manner.  
28 I have conducted an appropriate investigation and researched the applicable statutes, court rules  
and case law, with regard to both the pending motion for a new trial and the pending Rule 35  
motion (filed pro se by the defendant during trial counsels' tenure). I have discussed with the

1 defendant my opinion as to the legal and factual merits of his second motion for new trial. I am  
2 certain that the defendant disagrees with my position.

3 The defendant has now gone beyond disagreeing with me and has taken a position  
4 directly hostile to me, including threatening to file an ethics complaint. While I stand by my  
5 conduct as an attorney in this matter, I have clearly failed to instill confidence in the defendant  
6 and satisfy him that I am acting in his best interest as far as the law and the facts will allow. The  
7 attorney-client relationship is irretrievably broken.

8 I therefore ask this court to grant this motion and the motion of the defendant and allow  
9 me to withdraw.

10 DATED this 7th day of October, 2011.

11  
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13 Gregory C Dickison, Lawyer  
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CERTIFICATE OF SERVICE

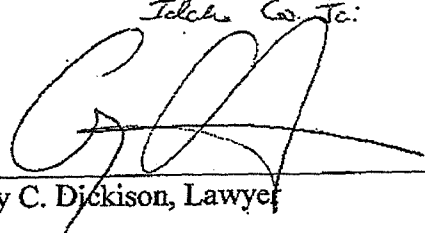
The undersigned hereby certifies that on this 7th day of October  
2011, a true and correct copy of the foregoing document was served upon the following by:

KIRK A. MACGREGOR  
Idaho County Prosecuting Attorney  
416 W. Main Street  
Grangeville, Idaho 83530

☐ U.S. Mail  
☐ Overnight Mail  
☒ ~~Fax~~ E-mail  
☐ Hand Delivery

MARK H. LANKFORD, IDOC NO. 20489  
Idaho Department of Correction  
Hospital Drive North #23  
Orofino, Idaho 83544

☒ U.S. Mail  
☐ Overnight Mail  
☐ Fax  
☒ Hand Delivery 10/11 e  
Idaho Co. Id.

  
\_\_\_\_\_  
Gregory C. Dickison, Lawyer

## COURT MINUTES

CR-1983-0020158

State of Idaho vs. Mark Henry Lankford

Hearing type: Motion

Hearing date: 10/11/2011

Time: 10:20 am

Judge: John Stegner

Courtroom: District

Court reporter: Keith Evans

Minutes Clerk: KATHYJ

Tape Number: District

Defense Attorney: Gregory Dickison

Prosecutor: Attorney General

1:30 Court announces case

Defendant present with counsel

Court gives synopsis of case

1:31 Dickison argues in support of motion to withdraw

1:32 MacGregor argues in opposition

1:33 Dickison objects to State's response to motion

1:33 Court grants motion to withdraw

Court addresses Dickison

Dickison to prepare order

1:34 Court addresses Lankford

Lankford responds to the court

Court addresses Lankford re: pro se appearances by defendant

1:35 Lankford responds to the court

Court addresses Lankford

Lankford responds

Court responds

1:35 Court appoints James Johnson from Moscow to represent Lankford

1:36 Court addresses motion in standing with the court

Motion for new trial and Rule 35 motion

MacGregor concurs

Court addresses Lankford

Lankford responds

1:37 Court will contact counsel in two weeks for status/scheduling conference  
Court addresses counsel re: transcripts

1:37 MacGregor addresses the court re: daily transcripts

1:38 Court addresses Dickison  
Dickison responds, he will deliver file to Mr. Johnson

1:39 Lankford addresses court re: resources for investigator

1:39 Court questions Dickison  
Dickison responds

1:40 Court responds and will authorize funds if investigator is needed  
Lankford addresses the court  
Dickison addresses the court

1:40 Court responds and will make funds available

1:41 recess

Signed:   
District Judge

Signed:   
Deputy Court Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 9:01 O'CLOCK A.M.

DOCKETED

OCT 12 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*[Signature]* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR-1983-20158

ORDER SETTING SCHEDULING  
CONFERENCE

It is ORDERED that a scheduling conference be conducted by telephone conference, to be initiated by the Court, commencing at 10:30 A.M. on October 27, 2011.

DATED this 11<sup>th</sup> day of October 2011.

*[Signature]*  
John R. Stegner  
District Judge

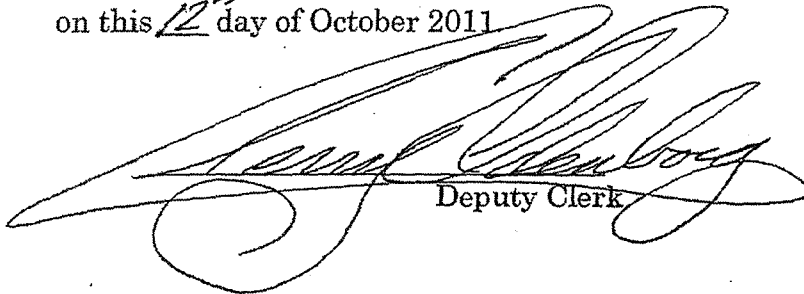
**CERTIFICATE OF SERVICE**

I do hereby certify that a full, true, complete and correct copy of the foregoing **ORDER SETTING SCHEDULING CONFERENCE** was sent by PDF email to:

James E. Johnson  
Attorney at Law  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

Kirk MacGregor  
Prosecuting Attorney  
[kmacgregor@Connectwireless.us](mailto:kmacgregor@Connectwireless.us)

on this 12<sup>th</sup> day of October 2011



Deputy Clerk

DOCKETED

OCT 12 2011

KATHY MACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT,  
IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant

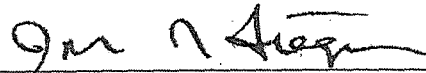
Case No. CR 83-20158

ORDER GRANTING MOTION TO  
WITHDRAW

The motion of defense counsel Gregory C. Dickison to withdraw from further representation of the defendant having come before the court, the court having heard argument from the parties, being fully advised of the premises, and good cause appearing therefore;

IT IS HEREBY ORDERED that the motion is GRANTED and Gregory C. Dickison shall be allowed to withdraw from further representation of the defendant, and his appointment as defense counsel is hereby terminated.

DATED this 12<sup>th</sup> day of October, 2011.

  
John R. Stegner, District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a true and correct copy of the foregoing document was served upon the following by:

KIRK A. MACGREGOR  
Idaho County Prosecuting Attorney  
416 W. Main Street  
Grangeville, Idaho 83530

☐ U.S. Mail  
☒ E-Mail  
☐ Fax: (208) 983-3919  
☐ Hand Delivery

MARK H. LANKFORD, IDOC No. 20489  
ICIO, Unit A1  
Hospital Drive North #23  
Orofino, ID 83544

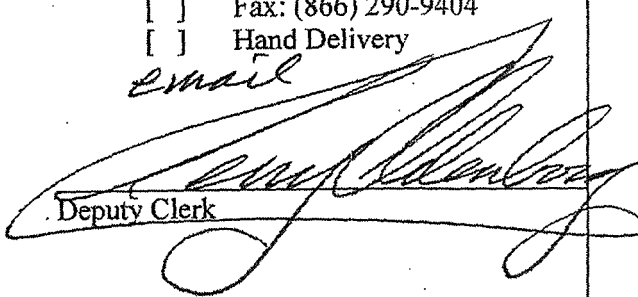
☒ U.S. Mail  
☐ Overnight Mail  
☐ Fax \_\_\_\_\_  
☐ Hand Delivery

GREGORY C. DICKISON  
Attorney at Law  
PO Box 8846  
Moscow, ID 83843

☐ U.S. Mail  
☒ E-Mail  
☐ Fax: (866) 290-9404  
☐ Hand Delivery

James E Johnson

*email*

  
Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:15 O'CLOCK P.M.

OCT 12 2011

DOCKETED

17-V MACKERMAN  
IDAHO COUNTY DISTRICT COURT  
CLERK  
J. J. [Signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR-1983-20158

ORDER APPOINTING COUNSEL

Mark Henry Lankford appeared before this Court on October 11, 2011, and requested that different counsel be appointed to represent him at public expense. Mr. Lankford was represented at that hearing by Gregory Dickison, Public Defender, and the State of Idaho was represented by Kirk MacGregor, Prosecuting Attorney. For reasons articulated on the record at that hearing and good cause appearing,

IT IS ORDERED that James E. Johnson, Attorney at Law, is appointed to represent the defendant in all further proceedings in this case at county expense.

DATED this 12<sup>th</sup> day of October 2011.

John R. Stegner  
John R. Stegner  
District Judge



## CERTIFICATE OF SERVICE

I do hereby certify that a full,  
true and correct copy of the foregoing  
**ORDER APPOINTING COUNSEL**  
was sent by PDF email to:

Gregory C. Dickison  
Attorney for Defendant  
[gdickison@dickisonlawfirm.com](mailto:gdickison@dickisonlawfirm.com)

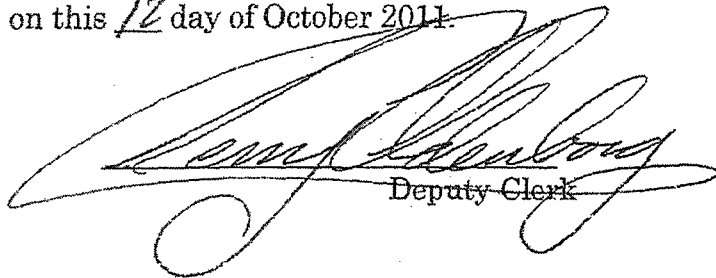
James E. Johnson  
Attorney at Law  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

Kirk MacGregor  
Prosecuting Attorney  
[kmacgregor@Connectwireless.us](mailto:kmacgregor@Connectwireless.us)

and mailed to:

Mark H. Lankford, IDOC No. 20489  
ICIO, Unit A1  
Hospital Drive North #23  
Orofino, ID 83544

on this 12<sup>th</sup> day of October 2011.



Deputy Clerk

OCT 27 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR-1983-20158

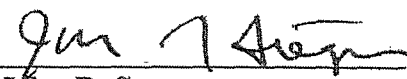
SCHEDULING ORDER

As the result of an informal scheduling conference conducted by telephone conference on October 27, 2011, with counsel for each of the respective parties participating, the Court enters the follows ORDERS:

(1) It is ORDERED that a status conference be conducted by telephone conference, to be initiated by the Court, commencing at 10:00 A.M. on December 19, 2011.

(2) It is FURTHER ORDERED that an evidentiary hearing be conducted at 10:00 A.M. on February 17, 2012, at the Idaho County Courthouse in Grangeville, Idaho.

DATED this 27<sup>th</sup> day of October 2011.

  
John R. Stegner  
District Judge

## CERTIFICATE OF SERVICE

I do hereby certify that a full, true, complete and correct copy of the foregoing **SCHEDULING ORDER** was sent by PDF email to:

James E. Johnson  
Attorney at Law  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

Kirk MacGregor  
Prosecuting Attorney  
[kmacgregor@Connectwireless.us](mailto:kmacgregor@Connectwireless.us)

on this 27<sup>th</sup> day of October 2011.

KATHY M. ACKERMAN, *Clerk*

Kathy Johnson  
Deputy Clerk

NOV - 9 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  
Plaintiff,

v.

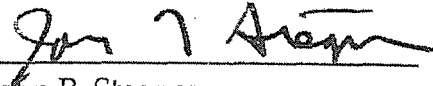
MARK HENRY LANKFORD,  
Defendant.

Case No. CR-1983-20158

ORDER

THE COURT, having examined the Affidavit for Legal Services submitted herein  
by assigned legal counsel James E. Johnson, hereby approves the same and orders  
payment of One thousand six hundred twenty-two dollars and twenty cents  
(\$1,622.20 ) to Mr. Johnson.

Dated this 8<sup>th</sup> day of November, 2011.

  
John R. Stegner  
District Judge

ORIGINAL

168

IDAHO COUNTY DISTRICT COURT  
AT 3:35 FILED  
O'CLOCK P.M.

DOCKETED

NOV 16 2011

KATHY MACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO


STATE OF IDAHO,	)	
	)	Case No. CR-1983-20158
Plaintiff,	)	
	)	ORDER FOR TRANSPORT
vs.	)	AND RETURN
	)	
MARK HENRY LANKFORD,	)	
	)	
Defendant.	)	
_____	)	

The defendant is currently incarcerated at the Idaho Correctional Institution in Orofino, Idaho.

It is ORDERED that the Idaho County Sheriff's Department shall cause the above named defendant to be returned to Idaho County for the evidentiary hearing scheduled to commence at 10:00 A.M. on February 17, 2012, in the District Courtroom of the Idaho County Courthouse in Grangeville, Idaho.

It is FURTHER ORDERED that the defendant be returned to the Idaho Correctional Institution in Orofino, Idaho upon completion of the hearing, if so directed by the Court.

DATED this 16th day of November 2011.

  
John R. Stegner  
District Judge

## CERTIFICATE OF SERVICE

I do hereby certify that a full,  
true and correct copy of the foregoing  
**ORDER FOR TRANSPORT AND RETURN**  
was sent by PDF email to:

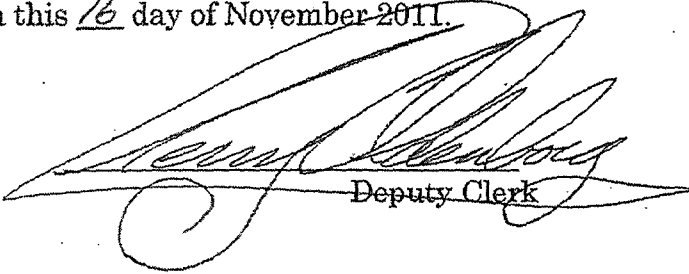
Kirk MacGregor  
Prosecuting Attorney  
[kmacgregor@Connectwireless.us](mailto:kmacgregor@Connectwireless.us)

Central Records  
Idaho State Board of Correction  
[centralrecords@idoc.idaho.gov](mailto:centralrecords@idoc.idaho.gov)

and hand delivered to:

James E. Johnson  
Attorney for Defendant

on this 16<sup>th</sup> day of November 2011.



Deputy Clerk

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 882 1362  
ISBN 6383

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 250 O'CLOCK 1 M.

DEC 02 2011

DOCKETED

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY


Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	ORDER TO SEAL MOTION,
	)	AFFIDAVIT, AND ORDER
V.	)	
	)	
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

On motion of the Defendant and good cause appearing, it is hereby ordered that  
the Defendant's Ex-Parte Motion, the Affidavit of James E. Johnson, and Order Under  
Seal be sealed.

Dated this 30th day of ~~December~~ <sup>November</sup> 2011

  
John R. Stegner  
District Judge

CLERK'S CERTIFICATE OF SERVICE

<sup>November</sup>  
On ~~December~~ 30th, 2011, I delivered copies of this order to James E. Johnson by  
Courthouse mail and Kirk MacGregor, Idaho County Prosecuting Attorney, by U.S. Mail

  
Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:45 O'CLOCK P.M.

DOCKETED

DEC 12 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

James E. Johnson  
604 S. Washington St., #3  
Moscow, Idaho 83843  
Telephone: (208) 882-1357  
Fax: (208) 882-1362  
ISB #6383

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  
Plaintiff,


) Case No. CR-83-20158  
)  
)

ORDER

v.  
MARK LANKFORD,  
Defendant.

THE COURT, having examined the Affidavit for Legal Services submitted  
herein by assigned defense counsel, James E. Johnson, hereby approves the same and  
orders payment of Nine Hundred Fifty-Two Dollars and Zero Cents (\$952.00).

752 920  
DATED this 5th day of December, 2010.

  
John R. Stegner  
District Judge



DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:49 P. O'CLOCK .M.

DEC 12 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 882 1362  
ISBN 6383

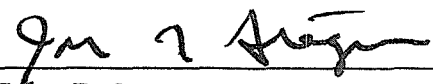
Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
	)	SECOND
Plaintiff,	)	ORDER TO SEAL MOTION ,
	)	AFFIDAVIT, AND ORDER
V.	)	
	)	
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

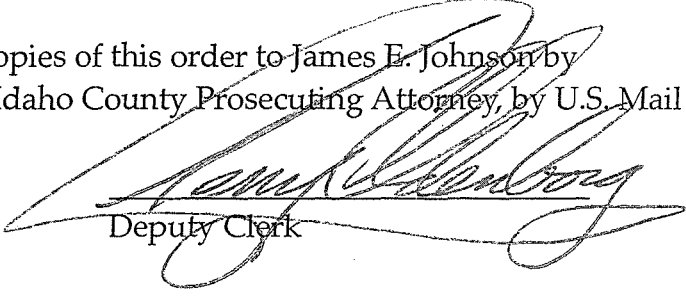
On motion of the Defendant and good cause appearing, it is hereby ordered that the Defendant's Second Ex-Parte Motion, the Second Affidavit of James E. Johnson, and Second Order Under Seal be sealed.

Dated this 9th day of December, 2011

  
John R. Stegner  
District Judge

CLERK'S CERTIFICATE OF SERVICE

On December 9th, 2011, I delivered copies of this order to James E. Johnson by Courthouse mail and Kirk MacGregor, Idaho County Prosecuting Attorney, by U.S. Mail

  
Deputy Clerk

SECOND ORDER TO SEAL MOTION, AFFIDAVIT, AND ORDER

ORIGINAL

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 5:00 O'CLOCK P.M.

DEC 23 2011

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
Telephone: (208) 882-6749  
Facsimile: (208) 882-7604  
Idaho State Bar No. 1380

RECEIVED

DEC 29 2011

JOHN R. STEGNER

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO COUNTY

STATE OF IDAHO

Plaintiff,

vs.

MARK LANKFORD,

Defendant.

Case No. CR-1983-20158

ORDER APPOINTING COUNSEL

Lane Thomas, having requested counsel be appointed to represent him in the above-entitled matter, at public expense, and the Court being satisfied that the applicant is indigent, and is not able to pay for the services of an attorney, and good cause appearing;

IT IS HEREBY ORDERED that D. Ray Barker is appointed to represent Lane Thomas, at public expense, in the above-entitled matter.

DATED this 22<sup>nd</sup> day of December, 2011.

  
Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of November, 2011, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

D. Ray Barker  
Attorney at Law  
P.O. Box 9408  
Moscow ID 83843

James E. Johnson  
Attorney at Law  
604 S. Washington St., Ste. 3  
Moscow, ID 83843

☒ First-class mail  
☐ Hand-delivered  
☐ Facsimile

Kirk A. MacGregor  
Idaho County Prosecuting Attorney  
Idaho County Courthouse  
P.O. Box 463  
Grangeville, ID 83530

☐ First-class mail  
☒ Hand-delivered  
☐ Facsimile

By: KATHY M. ACKERMAN, Clerk  
Kathy Johnson  
Clerk of the Court

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:31 O'CLOCK P.M.

DOCKETED

JAN - 5 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

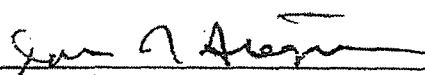
D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,	)	Case No. CR-1983-20158
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
MARK LANKFORD,	)	
	)	
<u>Defendant.</u>	)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, D. Ray Barker, hereby approves the same and orders payment of One Hundred Forty Dollars and No Cents (\$140.00).

DATED this 5<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
John R. Stegner  
District Judge

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:58 O'CLOCK P.M.

JAN - 6 2012

DOCKETED

KATHY M-ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

James E. Johnson  
604 S. Washington St., #3  
Moscow, Idaho 83843  
Telephone: (208) 882-1357  
Fax: (208) 882-1362  
ISB #6383

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,  
Plaintiff,

) Case No. CR-83-20158  
)  
)

ORDER

v.

MARK LANKFORD,  
Defendant.

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, James E. Johnson, hereby approves the same and orders payment of One Thousand Five Hundred Eighty-Five Dollars and Ninety-Two Cents (\$1,585.92).

DATED this 6<sup>th</sup> day of January, 2012.

John R. Stegner  
John R. Stegner  
District Judge

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:33 O'CLOCK P.M.

JAN 23 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 5670551  
ISBN 6383

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	
	)	
V.	)	MOTION FOR ORDER TO
	)	TRANSPORT PRISONER
MARK HENRY LANKFORD,	)	
Defendant.	)	

Comes now the Defendant, through his counsel James E. Johnson, and moves the Court for a Order to Transport Prisoner, pursuant to I.C. §19-3012. The Defendant seeks to have Bryan S. Lankford transported to the Idaho County Court in Grangeville for an evidentiary hearing in Mark Lankford's Second Motion for a New Trial. The hearing is currently scheduled for February 17, 2012.

This Motion is supported by the Affidavit of James E. Johnson, Re: Motion for Order to Transport Prisoner, which is attached.

Dated this 23 day of January, 2012.

  
James E. Johnson

MOTION FOR ORDER TO TRANSPORT PRISONER

ORIGINAL

1

178

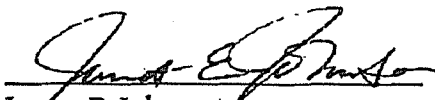
Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by  
and by mail and fax to:

Kirk MacGregor, Prosecuting Attorney  
P.O. Box 463  
Grangeville, ID 83530

Fax: 208 983 1740

On the 23 day of January 2012

  
James E. Johnson

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 5670551  
ISBN 6383

DOCKETED

IDAHO COUNTY DISTRICT COURT  
AT 3:54 FILED P.M.  
O'CLOCK

JAN 24 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	
	)	
V.	)	ORDER TO
	)	TRANSPORT PRISONER
MARK HENRY LANKFORD,	)	
Defendant.	)	
	)	

To:

Idaho County Sheriff's Office  
320 W. Main Street  
Grangeville, ID 83530

Bryan Stuart Lankford is currently incarcerated at the Idaho Maximum Security Institution in Kuna, Idaho. Mark Lankford has filed a motion supported by an affidavit seeking that Bryan Stuart Lankford be transported to Idaho County in order to give testimony at an evidentiary hearing.

It is hereby ordered that the Sheriff's Office of Idaho County, Idaho transport Bryan Stuart Lankford, IDOC number 20488, from the Idaho Maximum Security

ORDER TO TRANSPORT PRISONER

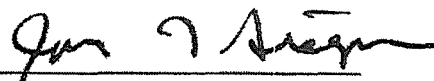
ORIGINAL ORIGINAL



Institution in Kuna, Ida, to the Idaho County Courthouse, 320 W. Main Street,  
Grangeville, Idaho for a evidentiary hearing in this case to be held on February 17, 2012,  
beginning at 10:00 AM.

It is further ordered that Idaho County Sheriff's Office return Bryan Stuart  
Langford to the Idaho Maximum Security Institution in Kuna, Idaho upon completion  
of his participation in the hearing, if so ordered by the Court at that time..

Dated this 24<sup>th</sup> day of January, 2012.

  
John R. Stegner  
District Judge

Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was sent by  
mail and fax to:

Kirk MacGregor, Prosecuting Attorney  
P.O. Box 463  
Grangeville, ID 83530  
Fax: 208 983 3919

Idaho County Sheriff's Office  
attn: Jail  
320 W. Main Street  
Grangeville, ID 83530  
fax: 208 983 1359

Jay Johnson

ORDER TO TRANSPORT PRISONER

604 S. Washington Street, suite 3  
Moscow, ID 83843  
fax: 208 567 0551

and by PDF email to:

Central Records  
Idaho State Board of Correction  
centralrecords@idoc.idaho.gov

On the 24<sup>th</sup> day of January 2012

KATHY M. ACKERMAN, Clerk  
Kathy Johnson  
Deputy Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:54 O'CLOCK P.M.

JAN 24 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO


STATE OF IDAHO, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MARK HENRY LANKFORD, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-1983-20158

ORDER APPOINTING COUNSEL  
FOR BRYAN LANKFORD

IT IS ORDERED that Gary Amendola, Attorney at Law, is appointed to represent  
Bryan Lankford in all further proceedings in this case at county expense.

DATED this 24th day of January 2012.

  
John R. Stegner  
District Judge

ORDER APPOINTING COUNSEL  
FOR BRYAN LANKFORD - 1

## CERTIFICATE OF SERVICE

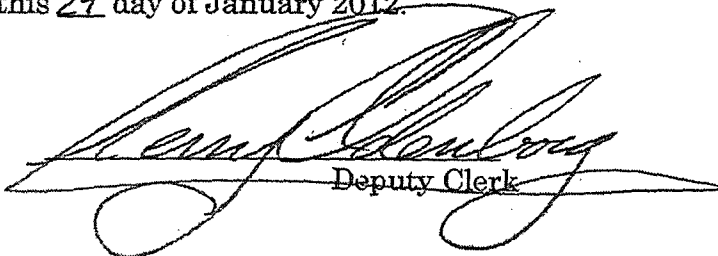
I do hereby certify that a full,  
true and correct copy of the foregoing  
**ORDER APPOINTING COUNSEL**  
was sent by PDF email to:

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James E. Johnson  
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Kirk MacGregor  
Prosecuting Attorney  
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on this 24<sup>th</sup> day of January 2012.



Deputy Clerk

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 5670551  
ISBN 6383

Attorney for Mr. Mark Lankford

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 10:41 O'CLOCK JAN 3 0 2012

JAN 3 0 2012

KATHY MACKERMAN  
CLERK OF DISTRICT COURT  
JAMES E. JOHNSON DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
	)	FIRST MOTION IN LIMINE:
Plaintiff,	)	FOR THE COURT TO TAKE
	)	JUDICIAL NOTICE OF TESTIMONY
V.	)	BY LANE THOMAS
	)	
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

Comes now the Defendant, through his counsel James E. Johnson, and moves the Court to take judicial notice of the testimony of Mr. Lane Thomas in and evidentiary hearing of January 26-27, 2011 in *State v. David Joseph Meister*, Latah County Case number CR-2002-01534.

Ms. Nancy Towler, Certified Shorthand Reporter, has prepared and certified a transcript of an excerpt of the proceeding in which Lane Thomas testified. The excerpt contains the entirety of Lane Thomas's testimony on that day. It is attached as Exhibit A and incorporated by this reference.

FIRST MOTION IN LIMINE: FOR THE COURT TO TAKE JUDICIAL NOTICE  
OF TESTIMONY BY LANE THOMAS

ORIGINAL

The testimony is relevant in that it contains Lane Thomas's acknowledgement and admission that he is a liar and thief. While that is not sufficient to conclude that he lied while giving testimony in February 2008 at this Defendant's trial, it is an admission which was not available to the defense in 2008, and tends to support the Defendant's contention that Lane Thomas lied during his testimony at the Defendant's trial. IRE 401.

This motion is made *in limine* in order to resolve any questions about admissibility prior to the scheduled hearing, and to give the Court and parties time to adequately grapple with this proposed evidence.

The Court is authorized to grant this motion by Idaho Rules of Evidence 201.

(d) When mandatory. When a party makes an oral or written request that a court take judicial notice of records, exhibits or transcripts from the court file in the same or a separate case, the party shall identify the specific documents or items for which the judicial notice is requested or shall proffer to the court and serve on all parties copies of such documents or items. A court shall take judicial notice if requested by a party and supplied with the necessary information.

IRE 201(d)

Oral argument is requested on this motion.

Dated this 27<sup>th</sup> day of January, 2012.


  
James E. Johnson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail and emailed a PDF copy to:

Kirk MacGregor, Prosecuting Attorney  
P.O. Box 463  
Grangeville, ID 83530  
Fax: 208 983 1740

On the 27<sup>th</sup> day of January 2012

  
James E. Johnson

1 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
2 OF THE STATE OF IDAHO,  
3 IN AND FOR THE COUNTY OF LATAH

4 STATE OF IDAHO, )  
5 )  
6 Plaintiff, )  
7 vs. ) Case No. CR02-01534  
8 )  
9 DAVID JOSEPH MEISTER, )  
10 )  
11 Defendant. )  
12 \_\_\_\_\_ )

**COPY**

13 EXCERPT OF PROCEEDINGS

14 JANUARY 26-27, 2011

15  
16  
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19  
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21  
22  
23  
24 THE HONORABLE CARL B. KERRICK, PRESIDING  
25 DISTRICT JUDGE



## A P P E A R A N C E S

1

2

For the STATE:

. MICHELLE EVANS, ESQ.

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Moscow, Idaho 83843 and

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## I N D E X

JANUARY 27, 2011

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LANE THOMAS

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1 You also asked that written closings be  
2 presented, and you indicated you wanted an additional  
3 week for that, and I will allow that. So, the following  
4 Thursday, two weeks from today, it's my understanding  
5 that you would provide a written closing argument.

6 And I -- Ms. Evans, I'm assuming that the  
7 State can present its argument simultaneously two weeks  
8 from tomorrow; is that true, or would you need  
9 additional time?

10 MS. EVANS: Well, I guess, given that we're  
11 not in a give-and-take hearing situation where we're  
12 able to respond to each other's arguments, I think that  
13 we may need additional time depending on what they  
14 submit.

15 THE COURT: Well, I guess what I was going  
16 to propose is that both of you submit, and each of you  
17 have maybe an additional few days to reply, so each of  
18 you have an opportunity to rebut. So, make that closing  
19 argument due two weeks from tomorrow; and then maybe the  
20 following Tuesday, submit any rebuttal or reply that you  
21 might have to the other's argument.

22 So, not having a calendar in front of me,  
23 what's a week from tomorrow? February --

24 THE CLERK: February 3rd.

25 THE COURT: -- 3rd. So, February 3rd for

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1 the defendant to provide a response to what the State  
2 has provided to the Court by way of judicial notice.  
3 Then the 10th, written closings provided to the Court.  
4 And then the 15th, which would be the Tuesday following,  
5 would be the deadline for the replies simultaneously as  
6 well.

7 So, with that, why don't we go ahead and  
8 recess for the evening, and we will resume at 1:00  
9 tomorrow.

10 (COURT IN RECESS.)

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1 THURSDAY, JANUARY 27, 2010

1:08 P.M.

2

3

PROCEEDINGS

4

5 THE COURT: Why don't we go ahead and go on  
6 the record in State of Idaho versus David Meister  
7 Mr. Meister is present in the courtroom, as is counsel  
8 for both parties. This is the time set to resume the  
9 hearing that we've been conducting. We adjourned  
10 yesterday afternoon with the idea we would resume at  
11 this time.

12 And, Ms. Evans, you may call your next  
13 witness on behalf of the State.

14 MS. EVANS: Thank you, Your Honor. We call  
15 Lane Thomas.

16 THE COURT: Mr. Thomas, if you would just  
17 turn this way, if you'd like to face Madam Clerk, raise  
18 your right hand and be sworn in, please.

19 LANE THOMAS,  
20 a witness of lawful age, having been first duly sworn to  
21 tell the truth, the whole truth and nothing but the  
22 truth, was thereupon called as a witness on behalf of  
23 the State and testified upon his oath as follows:

24 THE CLERK: Please be seated.

25 THE COURT: Mr. Thomas, before we allow

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1 counsel to question you, I just want to make a record of  
2 the fact that you had previously requested that the  
3 Court appoint Court-appointed counsel to represent you  
4 in this matter.

5 THE WITNESS: Yes.

6 THE COURT: And pursuant to your request, I  
7 entered an order back in November appointing Mr. Barker  
8 to represent you. Mr. Barker is in the courtroom. Have  
9 you had an opportunity to speak with Mr. Barker?

10 THE WITNESS: Yes.

11 THE COURT: And have you had an opportunity  
12 to speak with him about your rights concerning this  
13 matter?

14 THE WITNESS: Yes.

15 THE COURT: And have you had sufficient time  
16 to speak with Mr. Barker about that?

17 THE WITNESS: Yeah.

18 THE COURT: Okay. Would you like to take  
19 any additional time right now and speak with Mr. Barker?

20 THE WITNESS: Not unless he needs to speak  
21 with me. I don't see why.

22 THE COURT: With that then, Ms. Evans, you  
23 may inquire.

24 MS. EVANS: Thank you, Your Honor.

25

## DIRECT EXAMINATION

1  
2 BY MS. EVANS:  
3 Q. Would you please state your name and spell your  
4 last name for the record?  
5 A. Lane Franklin Thomas, T-H-O-M-A-S.  
6 Q. Okay. Thank you. Lane, could you tell us, have  
7 you -- were you born here in the Moscow area?  
8 A. No.  
9 Q. Okay. When did you move to this area.  
10 A. About 1993.  
11 Q. Where did you live when you moved here in '93?  
12 A. Carmichael Road.  
13 Q. Okay. Did you live at any other places within  
14 the Moscow area?  
15 A. Several places in the Moscow area.  
16 Q. Where did you live after Carmichael Road?  
17 A. I think we went back to Maryland.  
18 Q. Okay. And then, obviously, you came back to this  
19 area?  
20 A. Yeah.  
21 Q. And then where did you live when you came back to  
22 the Moscow area?  
23 A. I believe we stayed -- my mom and I were staying  
24 in motels for a while until we got a place on Taylor  
25 Avenue up on U of I campus.

1 Q. Did you ever live on North Polk Extension?  
2 A. Yes.  
3 Q. And was that a place that your -- that your mom  
4 had?  
5 A. No. It was my stepdad's place. We moved there  
6 right after we lived on Taylor Avenue after Jerry  
7 Thompson got married.  
8 Q. Okay. And do you remember what -- what year that  
9 was that you -- that they got married and moved out  
10 there?  
11 A. No, I don't.  
12 Q. Okay. How long a period of time -- well,  
13 actually, let me ask you this. Did you actually stay at  
14 that North Polk Extension home?  
15 A. Yeah.  
16 Q. Okay. How long would you say you lived out  
17 there?  
18 A. Five, six years, I'm thinking. It was quite a  
19 while.  
20 Q. Do you remember what years those covered when you  
21 would have left home?  
22 A. It was all the way up until Jerry died that we  
23 all stayed there off and on. None of us kids really  
24 moved out. I mean, if we needed -- if we moved out and  
25 needed a place to go back to, it was there to go back

1 to, so...  
2 Q. Okay. Do you remember when it was that Jerry  
3 died, what year?  
4 A. No, I don't.  
5 Q. Do you have a ballpark as to how long ago it was?  
6 A. Twelve years ago maybe, ten years. I don't --  
7 it's just a wild guess. I don't know. I'm not sure.  
8 Q. Did you know -- in your growing up years here in  
9 Moscow, did you know Tonya Hart?  
10 A. I think I met her once. I didn't know her.  
11 Q. Okay. Did you know Jesse Linderman?  
12 A. Yes.  
13 Q. How did you know him?  
14 A. When we moved here, we lived on Carmichael Road.  
15 He lived in the trailer court nextdoor to us. It was --  
16 he was a friend then.  
17 Q. Okay. Were you about the same age?  
18 A. I guess we were. Never asked him, hey, how old  
19 are you, but I guess we were.  
20 Q. Okay. You said you were friends then. Did that  
21 end at some point, you being friends?  
22 A. When we moved back to Maryland, we were there for  
23 probably about a year or so. And then when we came  
24 back, I just never really had contact with him since  
25 then, except for bumping into him here and there. I

1 really wouldn't call it a friendship since I've been  
2 back or anything like that. It's just --  
3 Q. Okay.  
4 A. -- one of the people you know, you see, you say  
5 hi to.  
6 Q. Did you -- let me ask you this. In the time here  
7 you've been in Moscow area, have you ever been in  
8 trouble with the law?  
9 A. Several times.  
10 Q. Okay. When did that start?  
11 A. Pretty much the week we moved here in '93.  
12 Q. What did you do?  
13 A. Just petit theft, stole a case of beer from  
14 Tidyman's. There was a guy stalking my sister, so we  
15 beat him up. Just hoodlum punk stuff. I mean, just  
16 getting in trouble, driving without licenses, things  
17 like that.  
18 Q. Okay. During that period of time that you've  
19 been here in Moscow, have you been involved with drugs?  
20 A. Yes.  
21 Q. Okay. What kind of drugs?  
22 A. Methamphetamines, marijuana, pills.  
23 Q. Were any members of your family also involved in  
24 that?  
25 A. I'm not sure. I'm really not sure. I mean, me

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and my family really never had a close -- we never had any closeness enough that -- other than my sister, Joy, we never had a close enough to trust each other to do anything like that around each other, so...

Q. Okay. How many are -- excuse me. How many kids are in your family?

A. There's seven of us.

Q. And are you the older or younger son?

A. I'm right in the middle.

Q. Okay. And you talked about your sister -- or are any of your family still around?

A. My sister, Joy. And I just heard from a guy that came to jail that my brother, George, may be around again.

Q. Okay. And who are your other sisters?

A. My sister, Allison, Naomi, Maggie.

Q. Are Naomi and Maggie, are they older or younger than you?

A. They're younger.

Q. Okay. How did you get along with your sisters growing up?

A. Not good. I mean, I -- I was pretty much raised up in foster homes and pretty much a product of the state. I didn't really live at home from the age ten or 11 on. I was just in and out of group homes, foster

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homes.

Q. Okay. I want to focus you to December of 2001. What was your relationship like with your family members at that time?

A. I think Joy was the only one that I really had any contact with at all. I was -- if I needed a place to stay, she let me sleep on her couch now and then. And that's pretty much the only one I really talk to, I think.

Q. Okay. In December of 2001, did you have a place to stay --

A. No.

Q. -- of your own? Were you married at the time?

A. I had a wife type, but not a wife. I wasn't married.

Q. A wife type? Is that what you said?

A. Yeah.

Q. And who was that?

A. Jessica Elliott.

Q. What about Kim Jondro? Who's that?

A. I was divorced from her at that time, I believe.

Q. So, she would have been your ex-wife --

A. Yeah.

Q. -- at that time? In that winter of 2001, December area, did you -- had you made any contact again

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1 with Jesse Linderman?

2 A. I don't think so. I think the last time I ever  
3 had any contact with Jesse Linderman was when we lived  
4 in what we called White Harlem Apartments. And I don't  
5 remember ever talking to him or even seeing him. I  
6 remember seeing him drive his truck around town, but  
7 that's about it.

8 Q. Where are the White Harlem Apartments?

9 A. Blaine and Third Street.

10 Q. And who did Jesse live there with?

11 A. I believe that was the one time I met Tonya.

12 Q. Do you remember when that was, what year?

13 A. I -- I don't remember.

14 Q. Okay. Had you ever bought drugs from Jesse?

15 A. I tried to once, but he wouldn't have nothing to  
16 do with it.

17 Q. Why is that?

18 A. I don't know if it was because he wasn't selling  
19 drugs at the time or if it was because he just -- just a  
20 trust issue. I don't know. I mean, nobody's going to  
21 sell you anything if they don't trust you. So...

22 Q. Okay. Did you and Jesse run in the same crowds?  
23 Did you have the same associates?

24 A. Not that I know of.

25 Q. I want to take your attention back to a period of

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1 around 1998 timeframe. Do you remember meeting up with  
2 an Angela Crabtree?

3 A. Yeah.

4 Q. Okay. Would you describe what happened there?

5 A. I don't remember where we was at, but we were  
6 drinking a bunch of Tequila one night, went back to her  
7 apartment, had sex, and I left.

8 Q. Okay. Where was that apartment?

9 A. I couldn't tell you. I don't remember where the  
10 apartment was.

11 Q. Do you recall whether it was in the Hawthorn  
12 Village?

13 A. Could have been, yeah.

14 Q. Is that the only time you had sex with her?

15 A. Yes.

16 Q. Okay. Do you know whether or not that apartment  
17 was hers or if it belonged to somebody else?

18 A. I thought it was her apartment.

19 Q. Okay.

20 A. I mean, she had a key to it. We went in and did  
21 our thing, and I left.

22 Q. Okay. Do you remember being confronted or  
23 anything by Tonya Hart during that incident?

24 A. No.

25 Q. Do you know whether or not that was Tonya Hart's

1 apartment?

2 A. No. I didn't learn that that was her apartment  
3 until a few days ago.

4 Q. During that incident, were you confronted by  
5 anyone? Did they assault you or hit you or --

6 A. No.

7 Q. -- anything like that?

8 A. Not that I'm aware of, but we were pretty wasted  
9 at the time, so...

10 Q. Was there anything about that incident involving  
11 Angela Crabtree that made you have any sort of bad  
12 feelings towards Tonya Hart?

13 A. No.

14 Q. Okay. All right. I then want to jump forward in  
15 time. Did you -- were involved in any sort of incident  
16 in the Ernst parking lot involving Jesse Linderman?

17 A. Yes.

18 Q. Could you describe that? What happened?

19 A. As far as I'm concerned, it involved more Jake  
20 Butler than anything. Jake Butler ripped me off for  
21 some -- for some pot. I called him up, asked him if  
22 he'd take care of it. We came up with a conclusion to  
23 meet in Ernst parking lot. And brought two friends of  
24 mine and ripped him off, took pretty much what I felt  
25 was owed to me.

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1 Q. Okay. Who were the two friends? Do you recall?

2 A. It was a dude named Dimario (phonetic). And I  
3 don't know what his brother -- his brother, I don't know  
4 what his name was. They were just two random guys I met  
5 at a party in Pullman. And everybody said, yeah,  
6 somebody owes you something, let them know, then go get  
7 it.

8 Q. All right. You met them and people told you that  
9 they would help you out if you were in a situation like  
10 that?

11 A. Pretty much.

12 Q. Okay. So -- so, describe it. You were in the  
13 Ernst parking lot. What happened?

14 A. We came over from Pullman. We were in a black  
15 Ford Ranger. We pulled into Ernst parking lot. Jake  
16 Butler's Jetta was up alongside it, kind of out of  
17 sight. And we pulled in the parking lot, and I just  
18 told him, that's the guys over there. And they went  
19 over, got in the back seat, came back a few minutes  
20 later, had a couple bags of weed and some cash, and we  
21 left.

22 Q. Okay. Do you know who else -- was there anyone  
23 else there with Jake Butler?

24 A. Learned later on down the road that Jesse  
25 Linderman was with him.

1 Q. Okay. Did you know that Jesse Linderman was  
2 going to be with him?

3 A. No.

4 Q. Do you know what happened in relation -- what --  
5 did they talk about what they had done to Jesse, or did  
6 you --

7 A. Well, they said they got in the back seat. They  
8 told him that they wanted their -- all the pot they had,  
9 their money, their left shoes and their car keys.

10 Q. Their left shoes?

11 A. Yeah.

12 Q. Why?

13 A. Seen it on a movie once. They took somebody's  
14 left shoes, and they wouldn't chase after them on foot.

15 Q. Okay. All right. Did -- to your knowledge, did  
16 Jesse know you were involved with that?

17 A. I'm pretty sure he did. I mean, him and Jake  
18 Butler were pretty good friends then. I mean, I don't  
19 think they -- I'm sure he knew I was involved in it.

20 Q. Okay. Did you ever talk with him about it?

21 A. No, I didn't. I ran into Butler a few --  
22 probably seven, eight months later. The only thing Jake  
23 said is, you owe me 100 bucks and walked off.

24 Q. Okay. So, you indicated that you had been to  
25 Jesse Linderman and Tonya Hart's residence before?

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1 A. Yeah.

2 Q. And that's the one at White Harlem?

3 A. Yes.

4 Q. Okay. Had you ever been up to their trailer out  
5 on North -- on Highway 95?

6 A. I didn't even know they lived out there until  
7 Forrest Barnes came over and told us she was dead and  
8 that's where they were -- the cops were at.

9 Q. Okay. All right. I want to ask you about Jeremy  
10 White. Did you know who that was?

11 A. Yeah.

12 Q. Or is, I should say.

13 A. Yes.

14 Q. Okay. How did you meet him?

15 A. I believe I met him through my sister.

16 Q. Which sister?

17 A. Joy, I think.

18 Q. Okay. Do you remember when it was that you met  
19 him?

20 A. I know it was within months before Tonya was  
21 murdered.

22 Q. Okay. What was the occasion of meeting him? Did  
23 you -- out on the street?

24 A. She went over to his house to talk to him or  
25 something, and I wanted to go with them. And they were

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ike, no, you can't go over, but...

Q. I'm sorry, I didn't catch that last part.

A. They went over -- she went over to his house to talk to him about something, and I wanted to go with her. And they were like, no, some of the guys don't like you, something like that, you can't go over. I was pretty persistent about wanting to go over, and so she just took me over with her.

Q. Okay. And so, did you go into Jeremy White's residence?

A. Yes.

Q. Do you know who he was living with at the time?

A. No.

Q. Did you -- was there any other -- was Jeremy White there that time you went over?

A. Yes.

Q. Were there any other people in the house?

A. Yeah.

Q. Do you know who they were?

A. No.

Q. Okay. Are they guys or girls?

A. Mostly guys playing on computers.

Q. Okay. What happened when you went with Joy over to that place?

A. We went in, and I sat on the couch, and we talked

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to them about something and we left.

Q. Okay. Did you know at that point that Jeremy White had marijuana?

A. At that point, I figured out that they had marijuana and where he kept it.

Q. Okay. Did you see where he kept it?

A. Yes.

Q. Where did he keep it?

A. Kept it in a briefcase. And he pretty much just threw it on the bed in the bedroom.

Q. Okay. And where was that house located?

A. Right behind the Mark IV Hotel.

Q. Do you remember an address or anything like that?

A. No, I don't.

Q. Do you remember what the house looked like?

A. I believe it was like a blueish gray house. I'm not sure. It may have been one of the neighbor's houses or something. But it's been over ten years, so I'm not sure.

Q. Okay. Did you steal his marijuana?

A. Yes.

Q. Okay. Do you remember when you did that?

A. I believe it was two nights prior to Tonya getting murdered.

Q. Do you remember specifically it being two nights

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1 prior?

2 A. After sitting and thinking about all the events  
3 around what took place, around the time Tonya got  
4 murdered, yeah, I'm pretty positive it was two nights  
5 before.

6 Q. Okay. Have you made statements before that it  
7 could have been the night before, could have been the  
8 night of?

9 A. Long time ago. After sitting and thinking about  
10 it over and over and trying to recall everything that  
11 went on back then, I'm positive it was a couple nights  
12 before.

13 Q. Okay. How is it that you -- did you go over by  
14 yourself, or did you have somebody with you?

15 A. I went over by myself.

16 Q. Was it in the daytime? Nighttime?

17 A. It was probably about 45 minutes to an hour  
18 before dark. It was getting to be around dark time.

19 Q. Why did you do that?

20 A. I was broke, homeless and knew he had drugs I  
21 could steal and sell or trade off for something  
22 beneficial to me.

23 Q. Okay. And so, did you walk there, drive there?  
24 How did you get there?

25 A. I drove my Subaru there.

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1 Q. Did you tell anybody that you were going to do  
2 it?

3 A. No.

4 Q. Okay.

5 A. Everybody knew it was Jeremy's friends with him,  
6 so I wasn't about to advertise what I was going to do.

7 Q. Okay. How did you get in the house?

8 A. When I got there, the door was actually open a  
9 little bit. Front door wasn't even shut all the way. I  
10 just walked right in. I yelled for Jeremy, yelled, is  
11 anybody here? Nobody answered, so I knew right where to  
12 go.

13 Q. Okay. So, I take it you took the marijuana?

14 A. Yeah. I walked through the living room and into  
15 his bedroom, and his briefcase was just sitting right  
16 there on his bed.

17 Q. Okay. And did you take the whole briefcase?

18 A. Yes.

19 Q. Okay. Did you open it then to make sure there  
20 was anything in it, or what did you do?

21 A. I just threw it in the car and left. I wasn't  
22 going to stick around.

23 Q. Okay. So, how long do you think it took you to  
24 go in there and get it?

25 A. Matter of minutes.

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1 Q. What did you do after that?

2 A. Drove out Polk Extension. There's a "Y" out  
3 there, Foothill Road and Polk. I opened the briefcase  
4 up. There was a little yellow pencil box type thing in  
5 there with a bunch of weed in it. I took the weed out,  
6 put it in two separate baggies, stuffed it under my seat  
7 and threw the box and the briefcase out on the side of  
8 the road and left it there.

9 Q. All right. What did you do after you threw the  
10 briefcase out?

11 A. I believe I went to Falling Moon Tattoo Studios.  
12 Or not Falling Moon, sorry, Little Cities.

13 Q. And where is that?

14 A. It's Third Street. It's the old Micro Theater.

15 Q. Why were you heading there?

16 A. Knew some people that worked there that I could  
17 probably trade it off, trade off the pot for some  
18 tattoos or some money or whatever I could get out of it.

19 Q. Okay. And so, I take it you went to Little City?

20 A. Yes.

21 Q. Was there anyone there when you got there?

22 A. Sarah Dalbec was there. Faye, Telisa, just  
23 people that worked there.

24 Q. Who's Faye?

25 A. I don't know her last name.

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1 Q. Anyone else there?

2 A. There could have been. I mean, it's a tattoo  
3 shop. There's people always coming and going, so I  
4 really didn't pay attention to anybody that comes in at  
5 all.

6 Q. And you said Telisa?

7 A. Yes.

8 Q. Is that Telisa Swan?

9 A. Yes.

10 Q. All right. So, did you get your tattoo?

11 A. Nope.

12 Q. What happened?

13 A. We didn't -- well, I left my car there. A few of  
14 us got in Sarah's car. We went to Safeway. Sarah -- I  
15 was teaching Sarah how to do donuts in her car in the  
16 parking lot because there was snow out. We ended up  
17 getting some beer, going back up to her place. And  
18 that's when I gave her some of the pot and asked her for  
19 a tattoo out of it.

20 Q. Okay. So, I thought you said that you had left  
21 the marijuana under your seat of your car?

22 A. Left half of it under my seat.

23 Q. Okay.

24 A. I took the other half with me.

25 Q. And where was Sarah's place that you went to?

246

1 A. It was up off Third Street, up across from East  
2 City Park. I don't remember the name of the road.

3 Q. Was there anyone else there at her house or her  
4 place?

5 A. TJ Ingham, Bob Thompson, a couple other people  
6 that I didn't know. Sarah was there, of course. There  
7 was another girl named Sarah.

8 Q. You don't know her last name?

9 A. No.

10 Q. Okay. And so, you said you had half the  
11 marijuana with you, and you were talking with her about  
12 getting a tattoo?

13 A. Yes.

14 Q. And you didn't get a tattoo that night?

15 A. No.

16 Q. Okay. What did you do?

17 A. We pretty much smoked weed all night, smoked some  
18 meth and drank beer all night and just hung out.

19 Q. And when you say "we," who are you referring to?

20 A. The people pretty much I just told you that was  
21 there when I was there.

22 Q. Okay. "Pretty much," does that mean --

23 A. Well, everybody was coming and going all night.

24 You know, everybody was all spun out, so they're not

25 going to want to sit in one place too long.

247

1 Q. Okay. So, you stayed there the entire night?

2 A. Yes.

3 Q. Okay. Was there -- was Sarah there the entire  
4 night as well?

5 A. Yes.

6 Q. What about the others? Anyone else from that  
7 group?

8 A. Most of the time, me and Sarah were hanging out  
9 in her room. I'd come out to smoke some dope with the  
10 other guys once in a while. But I didn't really hang  
11 out with the other people that night. I was mainly just  
12 hanging out and bullshitting with Sarah.

13 Q. Okay. What did you do the next day?

14 A. It was after daylight sometime, I went and got my  
15 car. We left it down at the tattoo shop. And then I  
16 think I went to my sister's house that morning, early  
17 afternoon, morning time. And I ended up going out to  
18 Troy to see my ex-girlfriend and kids.

19 Q. At your sister's house, was she home?

20 A. I don't think she was home. I think it was just  
21 Shalako, and Rick was there.

22 Q. Okay. And so, this is your sister, Joy's, house  
23 that you went to?

24 A. Yes.

25 Q. And then to Troy. What did you do there?



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- 1 A. I went out to see Jessica and the kids.  
 2 Q. All right. Do you know how long you were out at  
 3 Troy?  
 4 A. A couple hours. I was back in town before dark,  
 5 just about dark.  
 6 Q. And why is it that you remember that?  
 7 A. Because I only had one headlight on my car, and I  
 8 didn't have a license. And I wasn't about to get pulled  
 9 over for having a headlight out.  
 10 Q. Okay. So, then you got back in town before dark.  
 11 Where did you go then?  
 12 A. I went to Joy's house.  
 13 Q. All right. And then what did you do?  
 14 A. I was there for a little while. I might have  
 15 left at some point, but I don't remember leaving. But I  
 16 know at one point, I asked if I could stay the night,  
 17 and I was told I couldn't stay the night.  
 18 Q. And what did you do when you were told you  
 19 couldn't?  
 20 A. I think I might have probably begged them to stay  
 21 because it was snowing out. And then it come down to  
 22 where I couldn't stay the night, so I went out in my  
 23 car, started it up, let it heat up. Shalako brought me  
 24 out a sleeping bag or a blanket of some sort. And I  
 25 pretty much tried to sleep in my car until later on when

249

- 1 Shalako came out and said, come upstairs, you're not  
 2 sleeping out in the snow.  
 3 Q. Then what did you do?  
 4 A. Went upstairs, everybody went to sleep. I was up  
 5 for a while. I know it was around 1:30, quarter to  
 6 2:00, I still hadn't fell asleep. And I think I left  
 7 for about five minutes to go to the gas station to get  
 8 beer.  
 9 Q. Did you drive or walk?  
 10 A. Drove my car.  
 11 Q. Didn't you just say earlier you didn't want to  
 12 drive because of your headlight?  
 13 A. I was burned out on dope and I wanted a beer, so  
 14 I took my chances. And it was literally a block away,  
 15 so I didn't see any harm. Didn't think I would get  
 16 caught, so I took a chance and drove up there and back.  
 17 Q. Okay. Do you know whether Joy or Shalako was  
 18 aware you left during the night?  
 19 A. I didn't think they was aware I left, I mean, but  
 20 they might have been.  
 21 Q. Okay. Are you sure it was still daylight when  
 22 you got to Joy's house that night?  
 23 A. I'm pretty sure it was. I'm almost positive.  
 24 Q. Okay. Did you go out driving on North Polk  
 25 Extension that night?

250

- 1 A. I don't think so.  
 2 Q. All right. So, after you get your beer, you head  
 3 back to Joy's house, did you go back inside then and  
 4 sleep?  
 5 A. Yeah.  
 6 Q. Okay. Where was Joy and Shalako at that time?  
 7 A. I believe they were in their room sleeping.  
 8 Q. Okay. What about their little -- their child?  
 9 A. She sleeps where she wants most of the time, so  
 10 it's -- I don't know that night. She could have been on  
 11 one of the couches. She could have been in her room. I  
 12 mean...  
 13 Q. Okay. So, I assume at some point you woke up  
 14 from sleeping. Describe what happened the next morning.  
 15 A. I heard a knock on the door the next morning.  
 16 And I don't remember if Shalako came out and answered  
 17 the door with me or what, but I mean, I answered the  
 18 door. And Forrest Barnes was standing there crying, and  
 19 he just kept saying, Tonya's dead.  
 20 Q. Is Forrest a friend of yours?  
 21 A. Yeah.  
 22 Q. Did you know who he was talking about?  
 23 A. No, I had no clue. Like I said, I had only met  
 24 Tonya maybe once before. And I remember asking him,  
 25 who's Tonya? And he kept saying, I need a ride to

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- 1 Robin's house to tell her Tonya is dead. And then  
 2 somebody said it was Shorty's girlfriend, and I was  
 3 like, oh, it kind of clicked who it was.  
 4 Q. And who's Robin?  
 5 A. Robin Ziegler. She's just a friend that all of  
 6 us know.  
 7 Q. Okay. How long was Forrest there telling you  
 8 about what had happened?  
 9 A. Not long, because he was pretty adamant about  
 10 getting to Robin's house. So, we took him to Robin's  
 11 pretty quickly.  
 12 Q. Okay. What kind of details did he give you about  
 13 what had happened?  
 14 A. He said something about he went up to --  
 15 something about going to Tonya's house to see if she was  
 16 there or Shorty was there, and the cops were there. The  
 17 place was taped off, and found out she was dead.  
 18 Q. Did he give you any further details than that?  
 19 A. Not that I remember.  
 20 Q. You mentioned earlier in your testimony that this  
 21 is when you learned that she lived out in a trailer and  
 22 not at White Harlem.  
 23 A. Yeah.  
 24 Q. Okay.  
 25 A. He told us that -- he was like -- somebody said

252

1 something about where was that at, her house. And then  
2 it came out that it was in a trailer on the side of the  
3 highway.

4 Q. Okay. Did you know where they were talking about  
5 when they --

6 A. Huh-uh.

7 Q. Okay. So, what did you do after -- you said that  
8 we gave him a ride out to Robin's. Who's that?

9 A. I don't remember how he got out there. I  
10 remember I went out there. I don't know if I drove him  
11 or Joy drove him and I rode with them, but I know he  
12 ended up at Robin's, and I ended up going with him to  
13 drop him off out there.

14 Q. Okay. Did you ride in the same car then?

15 A. Yeah.

16 Q. Okay. Did -- do you recall any sort of physical  
17 reaction to learning the news about Tonya's death?

18 A. My physical reaction?

19 Q. Yes. Did you have any physical reaction?

20 A. Pretty much my reaction is, if you told me right  
21 now a man in China died, it would have no effect on me  
22 because I didn't know Tonya. She wasn't a friend of  
23 mine. I didn't know her. I mean, it really didn't  
24 affect me at all.

25 Q. Okay. Why would -- why would someone say that

253

1 you went white under the eyes?

2 A. I had been up for days. I mean, up off and on  
3 partying. So, I was not eating. I don't know. My face  
4 is probably pale all the time. If you've ever seen  
5 anybody that's been binge drinking or doing dope for  
6 days, I mean, you could probably see where that came  
7 from.

8 Q. Okay. Okay. So, you went out a couple days  
9 later to talk to the Sheriff's Office, didn't you?

10 A. Yeah.

11 Q. Okay. Why did you do that?

12 A. There was a thing on the news that said if  
13 anybody seen anything that could have been out of the  
14 ordinary concerning Tonya Hart's murder, to let the  
15 police know. And I thought maybe I might have known  
16 something that could help them out.

17 Q. Okay. What did you know?

18 A. Within days around her murder, I don't remember  
19 what day it was, I was driving out Polk Extension. I go  
20 out there quite a bit, go driving back roads, drink  
21 beer. It's just a way to go somewhere and get away from  
22 everybody in town and be able to drive and drink without  
23 cops harassing you.

24 There was a black Nissan with chrome around the  
25 doors parked in a spot that I've -- I've never seen it

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1 there before. The only thing I've ever seen there was a  
2 Nissan flatbed where an old -- where a guy went and fed  
3 his animal he had there.

4 Q. Okay. So, you drive North Polk Extension a lot?

5 A. Yeah.

6 Q. Or at that period of time, you did?

7 A. Even still now when I'm not in jail. If I want  
8 to drive around on the back roads and trash around in a  
9 car, I still go out that way, out Mountain View and out  
10 Idler's Rest.

11 Q. Okay. And where -- why was this so unusual to  
12 see this vehicle there?

13 A. I've never seen anything other than this -- the  
14 whole time I lived at Jerry's house, I have never seen  
15 anything other than a Nissan pickup with a flatbed on it  
16 and a guy there taking care of his animal.

17 Q. Okay.

18 A. So, it just stuck out as something not right.

19 Q. And so, where is that located next to? Is there  
20 anything in particular?

21 A. Probably 80 yards up from the City Shop.

22 Q. Okay. Anybody that lives right next to there  
23 that you --

24 A. The Dalbecs.

25 Q. Okay. And would that be where Telisa Swan lived?

255

1 A. Yes.

2 Q. Okay. And did Sarah live there as well?

3 A. I don't know. I've never been in that place.

4 Q. And just to go back, Sarah Dalbec, is she also  
5 known as Sarah Foo?

6 A. Yes.

7 Q. All right. So, why did you think that it would  
8 be significant that there was a car parked there?

9 A. It was just out of the ordinary to see anything  
10 other than the old guy's truck there. I mean, I thought  
11 maybe -- there were rumors that somebody had cut across  
12 the field onto Polk Extension, and it just seemed out of  
13 place, that car being there. And I thought if it helped  
14 the police, tell them.

15 Q. Did you think that that was close to where the  
16 murder had happened?

17 A. At the time, I thought it was directly across the  
18 field from it, but I've learned by looking at maps that  
19 it's way off. I mean, it's quite a ways off across the  
20 field.

21 Q. All right. I'm going to ask for you to be shown  
22 State's Exhibit No. 1. I'll let you take a second to  
23 orient yourself there on the image.

24 A. Which way is which?

25 Q. I believe --

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1 MR. WHITNEY: Objection, Your Honor.

2 Counsel is testifying. If he can't understand the map,  
3 he can't remark on the map.

4 THE WITNESS: Oh, I'll find it on the map.

5 BY MS. EVANS:

6 Q. Okay. Just take a moment and see if you  
7 recognize what's on the map.

8 A. Yeah, I know where -- I recognize everything on  
9 the map. This is Polk Extension running out  
10 (indicating). I'd say right about --

11 Q. Do you recognize where Highway 95 is?

12 A. Yes, right here, the red strip (indicating).

13 Q. Okay. And how -- where does North Polk Extension  
14 run in comparison?

15 A. It runs right along right here all the way out to  
16 Foothill Drive, right there where I left the briefcase.  
17 Right about that "Y" is where I left it (indicating  
18 throughout).

19 Q. Okay. I'm going to have you mark -- let's say a  
20 black pen, shall we. If you could mark where you left  
21 the briefcase, and then just initial next to it.

22 A. (Witness (Witness complies.).)

23 Q. Okay. Now, do you recognize on there the area  
24 that you talked about where you had seen the car next to  
25 the Dalbec's place?

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1 A. Yeah. It's right around here right, right in  
2 this little cluster of houses (indicating).

3 Q. Okay. Do you recognize where -- out on North  
4 Polk Extension, where you would have, I guess, stayed at  
5 Jerry's house?

6 A. It's right up past Moscow Hide and Fur. Right  
7 here (indicating), right where it's already marked,  
8 Joy's home (inaudible).

9 Q. Okay. So, you agree with Joy that that's  
10 where --

11 A. Yeah.

12 Q. -- that home was?

13 A. Yeah.

14 Q. Okay. And so, could you, I guess, circle the  
15 place where the Dalbecs -- or circle the place where you  
16 saw the car.

17 A. It's right about here (indicating). (Witness  
18 (Witness complies.).)

19 Q. And you had mentioned the City Shop. Do you see  
20 that on there as well?

21 A. Yeah, it's right here (indicating).

22 Q. Okay. And could you initial that as well?

23 A. Yeah, I initialed above it.

24 Q. Okay.

25 A. I figured you'd ask that.

258

1 Q. Okay. And could you just put down "car" right  
2 next to where you're indicating?

3 A. Yeah. (Witness (Witness complies.).)

4 Q. Okay. All right. Are you able to tell from that  
5 aerial image, can you see the place where you took the  
6 marijuana from Jeremy White? Do you know approximately  
7 where that would have been?

8 A. Yeah. Let me -- give me a second here, I'll find  
9 it. Right here (indicating).

10 Q. Okay. And is that the Mark IV area? Is that  
11 what you're --

12 A. That's what it appears to be, yeah.

13 Q. Okay.

14 A. Mark IV.

15 Q. Could you -- I don't -- is there already  
16 something written on there? I can't tell.

17 A. No.

18 Q. Okay. Could you circle that area and put, I  
19 don't know, "White" for Jeremy White's house?

20 A. (Witness (Witness complies.).)

21 Q. All right. And so, you said that down there  
22 where you put the car, you thought that the footprints  
23 came out there?

24 A. Yeah. I heard that footprints went from Tonya's  
25 trailer to Polk Extension. And I seen this car here

259

1 (indicating), and it just didn't look right.

2 Q. Okay.

3 A. But then again, I thought that this was farther  
4 down than what it actually was at the time.

5 Q. Okay. Do you know now where the -- where the  
6 murder happened?

7 A. Yes.

8 Q. Okay. And where is that on the map? Can you  
9 see --

10 A. Right up here (indicating).

11 Q. Okay. Thank you. You can set that aside now.  
12 Thanks.

13 So, Lane, I want to go back to you going into the  
14 Sheriff's Office and giving a statement about the car.  
15 Didn't you tell them that it -- that you had been out  
16 driving on the night of the murder?

17 A. I told him I thought it was on the night of the  
18 murder. And Don King was pretty persistent on -- that  
19 the night that I was out driving had to have been on the  
20 night of the murder.

21 Q. Okay. In your recollection, do you believe it  
22 was the night of the murder?

23 A. I know it wasn't the night of the murder.

24 Q. And why is that?

25 A. Just I -- the night before the murder and the

260

1 night of the murder, I knew where I was. I know what I  
2 was doing, who I was with. And I just -- I wasn't out  
3 driving that road that night.

4 Q. You're positive about that?

5 A. Positive.

6 Q. Okay. And so -- and then you wrote a written  
7 statement about that as well?

8 A. Yes.

9 Q. And you put down that you were out on North Polk  
10 Extension on the night of the murder; is that right?

11 A. Yes, I did.

12 Q. Okay. And you put down the hours being  
13 between -- was it 10:15 to 11:00 or something like that?

14 A. I don't remember what the hours were.

15 Q. All right. Did you have -- did Don King then  
16 talk with you again about a week or so later at the  
17 Sheriff's Office?

18 A. Yes.

19 Q. Okay. You had just been arrested on a bench  
20 warrant or something?

21 A. I believe so, yes.

22 Q. Okay.

23 A. Because I was brought up -- yeah, I was brought  
24 up from the jail to talk to them.

25 Q. Okay. What was that conversation about?

261

1 A. When I got in the interrogation room, he pulled  
2 out a little vial with a couple bullets in it and sat it  
3 in front of me. He said, do you know what those are  
4 for? And I thought they were for a 38 or something. I  
5 mean, I'm not familiar with handguns. And he asked me  
6 some questions, and that was about it. I don't remember  
7 the nature of the questions, but...

8 Q. Okay. At that point, did you believe that you  
9 were a suspect?

10 A. Yeah. I did think that they were looking at me  
11 at that point.

12 Q. Okay. Did you -- in talking with Don King twice  
13 at that period of time, did you find out any further  
14 details about what had happened to Tonya?

15 A. I found out she was shot in the head and in the  
16 chest. There was rumors about it, but he pretty much  
17 clarified it. It was -- I really don't remember the  
18 exact nature of our conversation.

19 Q. Okay.

20 A. I mean, it's -- we talked about the case. He  
21 asked me where I was, what was going on in my life  
22 around then. It's just pretty much basics you would ask  
23 anybody, I guess.

24 Q. Okay. And on that second interview, you talked  
25 again about being out there driving the night of the

262

1 murder, right?

2 A. Well, once again, it was to his -- you know,  
3 pretty much him telling me it must have been the night,  
4 that night. I mean, it's -- he didn't directly say, you  
5 were out there that night, but that's pretty much the  
6 conclusion I came up with him. I mean, but I know it  
7 wasn't on the night of the murder.

8 Q. During that period of time when you were talking  
9 with Don King, were you still using drugs?

10 A. I was always drinking and on something at that  
11 time, but I don't remember if I was. But there was a  
12 very high likelihood that I was either under the  
13 influence of pills or something. I mean, you know, I  
14 was in jail under a bench warrant. I mean, I could have  
15 been -- the second time I talked to him, I could have  
16 been just burnt out not in the right frame of mind. I  
17 don't know.

18 Q. So, why is it that now, today, that you don't  
19 think that you were out there on that road on the night  
20 of the murder?

21 A. I wasn't on that road the night of the murder.

22 Q. Okay. And do you -- but you specifically recall  
23 the car being out there?

24 A. Yes.

25 Q. So, in -- in reflecting on that, do you think it

263

1 was before or after the murder?

2 A. It could have been the day before I went to  
3 Sarah's or the day after the murder. But I'm sure it  
4 wasn't the day after the murder because there was cops  
5 everywhere out there from what I heard. I mean, so it  
6 must have been before. I know I wasn't out there the  
7 night of that murder.

8 Q. And when you say "out there," you're referring to  
9 North Polk Extension?

10 A. Yes. As far as I remember, police went out there  
11 and tried to get -- Moscow Hide and Fur has a camera set  
12 up that takes pictures of every car that drives by  
13 there. If I was out there, they'd have a picture of my  
14 car going by Moscow Hide and Fur. It takes a picture  
15 right at that road.

16 Q. Who told you that?

17 A. Don King.

18 Q. I'm sorry?

19 A. Don King told me that he was going to go out  
20 there and try to verify the night that I was out there.

21 Q. Okay. Did you ever hear anything back about  
22 that?

23 A. Didn't hear nothing about it.

24 Q. Did you talk with your ex-wife, Kim, at all about  
25 telling people not to talk to the police?

264

1 A. I believe I had made a statement before -- before  
2 in the past, because they didn't -- nobody was arrested  
3 at this time for whoever murdered Tonya Hart. And I had  
4 made the statement that, you're probably wise not to say  
5 something, because if it's somebody we know, they could  
6 very well come after you to shut you up.

7 Q. And why did you think it might be somebody that  
8 you know?

9 A. Everybody thought it was somebody that Tonya  
10 knew. Moscow is a small town. I mean, everybody hears  
11 about everybody. Everybody knows of everybody. I mean,  
12 it's...

13 Q. Did you think it was a drug deal issue?

14 A. At first I thought it could have been.

15 Q. Did you offer that up to Don King?

16 A. Yeah. He asked me if I had any theories on it.  
17 I told him I thought maybe it was a drug deal gone bad.  
18 Maybe somebody ripped somebody off.

19 Q. Did you ever specifically tell Kim to tell Joy  
20 and Shalako not to talk to the police?

21 A. No. If you look at Kim's history, she calls the  
22 police constantly and makes false reports.

23 Q. Okay. So, but you did make a statement that it  
24 would be -- something to the fact it's -- about not  
25 talking to the police?

265

1 A. Yeah. I was worried about my family and, you  
2 know, people I care about. You know, if they're going  
3 to the police and throwing their theories out of what  
4 happened and it got back to whoever shot Tonya, they  
5 could -- and they're still out running around, who's to  
6 say that's going to -- anybody's going to stop them from  
7 going after my family members?

8 Q. Did you -- during that period of time in 2001,  
9 what kind of shoes did you wear?

10 A. I wore work boots then. I've worn Caterpillar  
11 work boots for years. And I still usually only wear  
12 work boots.

13 Q. Okay. Do you -- have you ever worn tennis shoes?

14 A. Very rarely. My recent ex-wife brought me some  
15 Vans a couple times, but my son ended up wearing them  
16 more than I did.

17 Q. Okay. Did you ever wear skate shoes?

18 A. Not at that time, no.

19 Q. Did you ever in the past?

20 A. Well, the Vans that my wife bought me, my ex-wife  
21 bought me.

22 Q. Did you buy -- do you recall buying a pair of  
23 tennis shoes at Big Five on a good deal or anything like  
24 that around that period of time?

25 A. No.

266

1 Q. Would you have ever paid 80 or 90 bucks for a  
2 pair of shoes?

3 A. Hell no. I could think of a lot better things to  
4 do with 80 or 90 bucks than buy a pair of shoes I'm  
5 going to trash in a matter of weeks.

6 Q. Okay. So, let me ask you this. Did you ever own  
7 a pair of Osiris skate shoes?

8 A. No.

9 Q. Do you know what those are?

10 A. I've never even heard of that brand until a few  
11 weeks ago.

12 Q. Okay. Around the time that Tonya was killed, did  
13 you ever burn any clothing?

14 A. No.

15 Q. Did you ever ask anyone to burn any of your  
16 clothing?

17 A. No.

18 Q. Did you ever hear of your brother, George,  
19 burning any clothing?

20 A. Yes.

21 Q. Okay. And when was that?

22 A. Probably about a week or so before, maybe a  
23 couple weeks before. I know it was before Tonya's  
24 murder.

25 Q. Okay. What was the -- do you know what the

267

1 circumstances were regarding that?

2 A. George has got mental issues. Every now and  
3 then, he periodically gives all his things away,  
4 destroys them or burns them.

5 Q. Okay. I take it he's still suffering from that?

6 A. I believe he is, yes. It's been almost a year  
7 since I've spoken to him, but I think he's still  
8 schizophrenic and all that.

9 Q. Okay. Now, Lane, I want to direct your attention  
10 to, I guess it would have been in February of '02. So,  
11 this would have been a couple months after the murder.  
12 Were you in the Whitman County Jail at that time?

13 A. Yes.

14 Q. What was the reason you were there?

15 A. Evading police.

16 Q. Do you remember when it was that you got put into  
17 their -- the jail over there in Colfax?

18 A. I did six months there, and I got out in July.  
19 So, it was right at the beginning of February, end of  
20 January.

21 Q. And I'm sorry, you got out when?

22 A. July 4th, I believe.

23 Q. Okay.

24 A. My sister, Joy, picked me up.

25 Q. Okay. While you were in custody in Whitman

268

1 County, did you have any sort of work release or any  
2 sort of privileges like that?

3 A. Yeah. I was working in the kitchen.

4 Q. And what would that involve? Did you -- a  
5 certain number of hours per day, or what did you do?

6 A. Oh, just make breakfast, lunch and dinner. It's  
7 kind of like a split shift kind of thing. You go and do  
8 breakfast, clean up; go back to your unit; do lunch,  
9 clean up; go back and do dinner and clean up.

10 Q. Okay. Being on that sort of work situation, did  
11 you live -- were you housed in a specific unit for that?

12 A. Yeah. They call it Blue Unit.

13 Q. I'm sorry?

14 A. Blue Unit.

15 Q. And what does that mean, the Blue Unit?

16 A. Everybody dressed in blue scrubs, got to go out  
17 in the community and work, smoke cigarettes. I mean,  
18 got a little bit more privileges than the rest of the  
19 jail.

20 Q. Okay. How long were you on the Blue Unit?

21 A. Not too long.

22 Q. Okay.

23 A. I got kicked off the Blue Unit.

24 Q. And why is that?

25 A. We had two pedophiles in the jail that were

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1 vegetarians, and I took pleasure in altering their food.

2 Q. What does that mean?

3 A. Spitting in it, dropping it on the floor. I  
4 despise pedophiles and predators.

5 Q. Okay. So, that got you kicked off of your  
6 privileges?

7 A. Yeah.

8 Q. Where did you go after you no longer could do  
9 that work in the kitchen?

10 A. I believe I went to Orange Unit.

11 Q. And what kind of a unit is that?

12 A. There's ten cells, some single, some with bunks  
13 in them. And it's just lined on a wall and a big day  
14 room in the middle, weights, TV, ping pong.

15 Q. Okay. When you were in the Blue -- were you in  
16 the Orange Unit the rest of the time until you were out  
17 in July?

18 A. No.

19 Q. Okay.

20 A. I ended up getting put in segregation for --  
21 after that for the remainder of my time.

22 Q. When did you get put in segregation?

23 A. When did I or why?

24 Q. When?

25 A. I don't know, but I was in segregation for a

270

1 while. It was a couple months, I believe.

2 Q. Was it at the end of your time or in the middle  
3 of it?

4 A. It was at the end of my time, because I was  
5 released from segregation for my sentence.

6 Q. And so, segregation means you were in a cell by  
7 yourself?

8 A. They really don't -- they put me in the Green  
9 Unit, which is the intake unit for the jail. When you  
10 first get brought in there, you stay in the Green Unit  
11 until you make your first appearance in court. And then  
12 you either go to the max, which is yellow, or medium,  
13 which is orange. But I was in the Green Unit, the  
14 intake. But that's the unit I'm in for segregation.

15 Q. Okay. Was there anyone else in there with you,  
16 any other inmates?

17 A. I think maybe one or two people passed through,  
18 but not for any length of time.

19 Q. Okay.

20 A. Not for more than a night.

21 Q. Why were you in the Green Unit? I mean, yeah,  
22 segregation.

23 A. Before I got put in the Green Unit, somebody had  
24 placed a shank about that long (indicating) under my  
25 pillow. And Brian Shepard pushed me down on it, came

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1 through my pillow, poked at me. I jumped up, pulled my  
2 pillow off, seen this long shank about that long  
3 (indicating) with a sharp point on it.

4 Captain Ingalls was in the day room, and I went  
5 out and set it on the floor. Actually, I dropped it on  
6 the floor in front of Captain Ingalls and said, somebody  
7 put this in my room. And he immediately moved me out  
8 and put me in segregation.

9 Q. And who's Brian Shepard?

10 A. He's the guy that pushed me down on the -- my bed  
11 onto the shank.

12 Q. Okay. Was there more than one inmate in there  
13 with the last name Shepard?

14 A. Not that I'm aware of.

15 Q. Okay. Was he -- was this Shepard in the Blue  
16 Unit with you at all?

17 A. Yes.

18 Q. Okay.

19 A. Worked in the kitchen with me.

20 Q. Could his name have been James?

21 A. Yeah, we called him James. I mean, we also  
22 called him -- for a while, I thought his name was Brian  
23 James Shepard, but his name was James.

24 Q. Then why did you call him Brian?

25 A. I don't know. We just called him Brian for some

272

1 reason. I have no clue why.

2 Q. Was it just you, or did other inmates call him  
3 that?

4 A. Other people. I mean, it was -- I don't know.

5 Q. Okay. So, you were in the kitchen area with him  
6 working?

7 A. Yeah.

8 Q. Okay. You said that you got kicked off of that.

9 Did -- did he eventually get kicked off of that as well?

10 A. Yeah. Eventually, he got kicked off and put in  
11 Orange Unit. We were in the same cell together.

12 Q. Okay. When you were in Blue Unit, you said there  
13 was kind of a common area?

14 A. Yeah.

15 Q. Did you associate at all with him when he was in  
16 that area with you?

17 A. I had a couple altercations with him, but nothing  
18 to say we ever got a long. I didn't like the guy.

19 Q. Okay. What about in the Orange Unit? Did you  
20 associate with him there?

21 A. When I was in the cell with him in Orange Unit, I  
22 made it clear that I didn't like him and I didn't want  
23 him in my cell and I didn't want to be living with him.

24 Q. So, you shared a cell?

25 A. Yes.

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1 Q. Okay. And how long would you say you shared a  
2 cell with him?

3 A. Not long. I don't remember how long, but it  
4 wasn't long.

5 Q. And is that when you got put in segregation?

6 A. Yeah.

7 Q. Okay. While you were in the jail, I don't know  
8 whether it was blue or orange, did you have any  
9 association with Michael Scanlon?

10 A. I think he worked in the kitchen with us. If I  
11 remember right, we called him -- his nickname was Shrek  
12 because he kind of looked like Shrek off the cartoon.

13 Q. Okay. And did you talk with him at all while he  
14 was there?

15 A. Not really. I mean, he was just another inmate.  
16 I mean, when you're in jail -- at least me anyway, I  
17 don't want to know half the people I'm in there with and  
18 don't care for anybody I'm in there with.

19 Q. While you were in Whitman County Jail, did any  
20 deputies come and talk to you about this ongoing  
21 investigation into Tonya Hart's death?

22 A. Yes.

23 Q. How many times would you say that happened?

24 A. It was two or more, I believe.

25 Q. Okay. Were you given a polygraph while you were

274

1 there as well?

2 A. Yes.

3 Q. Okay. And then somebody interviewed you?

4 A. Yes.

5 Q. Was that fact known to any of the other inmates  
6 that you were there with?

7 A. Yes.

8 Q. Did you tell them, or how did they find out?

9 A. When you're in Orange Unit, you can see right  
10 through to where they were interviewing me. So, every  
11 time I got pulled out and the cops talked to me, the  
12 only thing everybody in the unit could see is that I'm  
13 going out and talking to cops, and they wanted to know  
14 why.

15 Q. Okay. Did you tell them why?

16 A. Yeah.

17 Q. What did you tell them?

18 A. I told them I was being asked questions in the  
19 murder of Tonya Hart.

20 Q. Okay. Did you tell them any more specific  
21 details than that?

22 A. I told them about the polygraph I took, told them  
23 I thought that they were implying that I might have had  
24 something to do with it.

25 Q. When you were in custody there, did you have

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1 access to any outside information regarding the  
2 investigation?

3 A. The only thing I knew at that point on the Tonya  
4 Hart death was what we read in the papers and what we  
5 seen on the news. So, I pretty much had no more  
6 knowledge than what the average Joe Blow in the public  
7 knew.

8 Q. Okay. When you were interviewed or given your  
9 polygraph, were you given any further information  
10 regarding the investigation?

11 A. When I was doing my polygraphs, they asked me  
12 some -- you know, what I was doing around the time.  
13 They really never divulged any information to me. It  
14 was more, what were you doing around the time, hooked me  
15 up to machine, asked me some questions --

16 Q. Okay.

17 A. -- and that was it.

18 Q. What about your interview with the -- with the  
19 detective?

20 A. Pretty much the same thing.

21 Q. And do you remember -- was that Kurtis Hall that  
22 you met with?

23 A. I believe so.

24 Q. Was it when you were interviewed by Kurtis Hall  
25 there in the jail that you admitted to him that you had

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olen marijuana?

A. Yes.

Q. Okay. You hadn't made admissions to Don King about that, had you?

A. I don't believe so. I was -- at that point, I don't like that they were looking more at me as a suspect. So, it was pretty much a point -- no matter what I did illegal around that time, let the police know so it could be verified where I was and what I was doing at the time.

Q. During your period of time in custody in Whitman County until you got out in July, you said you got newspaper articles, TV --

A. Yeah.

Q. -- segments. In the course of any of that information that was brought out about Tonya's death, did you -- was the name Dave Meister ever mentioned?

A. I believe so, yeah.

Q. You think so?

A. Well, it was in the newspaper. I mean, I don't know.

Q. While you were in jail?

A. I don't know. I mean, I just know that it was going on about Tonya's background, you know, she was a school student or something or just graduated or

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something and that she was killed. But I don't -- I don't know, could have been Dave's name brought up in it. I don't know.

Q. Okay. During your time there, did you talk to inmates in general about the case?

A. Anybody that wanted to know why I was being questioned by the police, I was -- yeah.

Q. Okay. Did you talk about it a lot?

A. It almost seemed like a daily basis, because people were assuming that I was out ratting people off to the police. And so, if they asked me what I was being talked about, I told them.

Q. Did you want people to know you weren't ratting anybody off?

A. Yeah. I mean, you can suffer some pretty severe consequences, even in a county jail, for -- if somebody thinks you're a snitch.

Q. And did you speak with Shepard specifically or Scanlon regarding the case?

A. Shepard, he was the main person that was always adamant on asking me questions about this case. I mean, he was constantly asking me if I had anything to do with it, if I had any involvement in it. And this was almost on a daily basis with him. I think that's one of the main reasons why I didn't like him and why I didn't want

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1 anything to do with him. And yeah, it was -- every --

2 almost every day somebody, one person or another, but

3 Shepard mainly a lot.

4 Q. Okay. And what about Scanlon? Did you ever have

5 any one-on-one conversations with him, or was it just

6 general conversations?

7 A. Just general conversations, but, you know, he's

8 asked me questions about it too, just like anybody else

9 would have.

10 Q. Okay. Did you like to talk about it?

11 A. I hated talking about it. I hate talking about

12 it right now.

13 Q. Did you make any statements to anyone in the jail

14 using the words "they" or "we" when describing what had

15 been done?

16 A. No.

17 Q. Okay. Did you ever tell anyone in the jail that

18 you had killed Tonya Hart?

19 A. No.

20 Q. Did you ever tell anyone in the jail that you

21 were part of the killing of Tonya Hart?

22 A. No. I've always -- since the first questioned

23 asked of me in this case, I've told people I had nothing

24 to do with the murder of Tonya Hart.

25 Q. Okay. Did you have anything to do with Tonya

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1 Hart's murder?

2 A. No, I did not. And if you would read the

3 polygraphs, you'd see that.

4 Q. Did you -- were you part of it? I'm not asking

5 if you were part of shooting. Were you anywhere near

6 it, or did you know it was going on?

7 A. No. And once again, if you'll look at the

8 polygraphs, you'll see that that's been determined, I

9 had no part, knowledge or involvement in the death of

10 Tonya Hart in any way whatsoever.

11 Q. I want to take you out a little bit more

12 recently. In April of 2009, were you on probation in

13 Lewiston at that period of time?

14 A. Could have been.

15 Q. Okay. Were you aware that James Shepard lived in

16 Lewiston at that time?

17 A. No, I didn't. No, I wasn't.

18 Q. Do you know a Todd Martin?

19 A. He lived below me in the apartments that I lived

20 in when I was on probation in Lewiston.

21 Q. Okay. Did you know that James Shepard worked at

22 the Main Street Grill in Lewiston?

23 A. I thought he might have, but I just came back on

24 transport from the prison, and Todd Martin was on

25 transport with me. And somehow we ended up discussing



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1 James Shepard. And that's when I found out that he did  
 2 work at Main Street Grill, that he was a cook there.  
 3 Q. Did you call up Main Street Grill and make some  
 4 allegations about James Shepard to try to get him fired?  
 5 A. No.  
 6 Q. Did you ever threaten James Shepard with a gun?  
 7 A. Nope.  
 8 MS. EVANS: May I have just a moment, Your  
 9 Honor?  
 10 THE COURT: You may.  
 11 MS. EVANS: Thank you.  
 12 THE WITNESS: Is it all right if we take a  
 13 restroom break? I need to go use the restroom.  
 14 THE COURT: We will take a break here, and I  
 15 think we might be getting pretty close to doing that.  
 16 THE WITNESS: Okay.  
 17 THE COURT: Or did you have some other --  
 18 MS. EVANS: I would be fine if we want to  
 19 just take a small break and then --  
 20 THE COURT: Resume?  
 21 MS. EVANS: -- to accommodate that, and then  
 22 we could resume.  
 23 THE COURT: Okay. Why don't we do that.  
 24 It's about ten after 2:00, and we'll break until 2:25.  
 25 We're in recess until then.

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1 (COURT IN RECESS.)  
 2 THE COURT: We are back on the record.  
 3 Counsel and Mr. Meister are all present.  
 4 And with that, Ms. Evans, you may continue  
 5 to inquire.  
 6 MS. EVANS: Thank you, Your Honor.  
 7 BY MS. EVANS:  
 8 Q. Lane, I want to go back and ask you about, you  
 9 had indicated earlier, as far as when you took the --  
 10 the marijuana from Jeremy White's house?  
 11 A. Yes.  
 12 Q. Let me first ask you this. Is there a nickname  
 13 that Jeremy White goes by?  
 14 A. Fro.  
 15 Q. Fro?  
 16 A. Fro.  
 17 Q. Why is that? Do you know?  
 18 A. He has an afro.  
 19 Q. Okay. You had indicated that you believed that  
 20 that was two nights prior to the -- to the murder?  
 21 A. Yeah, or the night before.  
 22 Q. Okay. So, if the murder occurred on  
 23 December 11th, what night are you talking about?  
 24 A. December 10th.  
 25 Q. Okay. So, I was asking you earlier whether or

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1 not you had made any sort of contact with Main Street  
 2 Grill regarding James Shepard?  
 3 A. Yeah.  
 4 Q. Okay. And you said you had not?  
 5 A. I haven't.  
 6 Q. Did you tell anyone that you did?  
 7 A. I don't think so. I mean, I just recently  
 8 learned that that's where he worked from Todd when we  
 9 came up on the prison transport together.  
 10 Q. You didn't say anything to him at that time about  
 11 maybe you had called?  
 12 A. No.  
 13 Q. Why would Todd say that you said that?  
 14 MR. WHITNEY: Objection. Speculation.  
 15 THE COURT: Sustained.  
 16 BY MS. EVANS:  
 17 Q. Did you give Todd any reason to think that you  
 18 had said that?  
 19 A. I said -- once after he told me that James did  
 20 work there, I did make comments about I should have done  
 21 something to get him fired.  
 22 Q. Okay.  
 23 A. But I never said I called and made -- tried to do  
 24 anything to get him fired.  
 25 Q. And why would you say that about Shepard?

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1 A. Can't stand Shepard. He's saying I had  
 2 involvement in a murder I had no part of, that I've gone  
 3 to great lengths to cooperate with the police, take  
 4 polygraph tests and prove I had no part of it.  
 5 Q. Okay. You indicated earlier that you take North  
 6 Polk Extension out there when you're trying to, I  
 7 guess --  
 8 A. Drive around the back roads and drink beer.  
 9 Q. Okay.  
 10 A. Pretty much that's it.  
 11 Q. To your knowledge, are there any other roads that  
 12 parallel 95 around to go out -- to take the back roads  
 13 out somewhere?  
 14 A. Well, you can go out -- when you get to Foothill,  
 15 you can either cut back to the highway, or you can go --  
 16 take a right, and it cuts up around. And you can either  
 17 get around to Mountain View, and then right before you  
 18 turn to go to Mountain View, there's another road that  
 19 runs along the highway. You can actually see the  
 20 highway from the road.  
 21 Q. How is it that you, I guess, figured out that  
 22 North Polk Extension is a good place to take the back  
 23 roads?  
 24 A. Because I lived out there. And when I didn't  
 25 have a license before I turned 18, that's where we'd go

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1 take our stepdad's car or steal my mother's car or  
2 whoever had a car, and just go out like to Idlers Rest  
3 and drink beer and just race each other on the back  
4 roads.

5 Q. You and who?

6 A. My stepbrother, Mikey Thompson, George Leef, Mike  
7 Halvorson, whoever was around at that time that wanted  
8 to go out and act like an idiot pretty much.

9 Q. Okay. Is it a common road for people to take?

10 A. For us, it was.

11 Q. Okay.

12 A. I mean, none of us had licenses. None of us had  
13 no legal right to be behind the wheel of a vehicle, so  
14 we learned all the back roads. I mean, we can go -- I  
15 can circle this whole town on back roads and come in at  
16 any point I want to.

17 Q. All right. Thank you. Lane, I don't have any  
18 other questions, but I'm sure Mr. Whitney will.

19 THE WITNESS: Okay.

20 THE COURT: Thank you, Ms. Evans.

21 Mr. Whitney?

22 MR. WHITNEY: Could I have just one moment,  
23 Your Honor? I don't want to go off the record. I just  
24 want to talk to Mr. Chapman for one second.

25 THE COURT: Sure.

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1 (DISCUSSION HELD OFF THE RECORD.)

2 MR. WHITNEY: Thank you, Your Honor. We're  
3 ready.

4 THE COURT: All right. You may  
5 cross-examine.

6 MR. WHITNEY: Thank you.

7 CROSS-EXAMINATION

8 BY MR. WHITNEY:

9 Q. Mr. Thomas, I believe you used the words "severe  
10 consequences," the term, rather, "severe consequences,"  
11 when you were testifying a few moments ago about  
12 snitches. Do I have that right?

13 A. Yep.

14 Q. What do you mean by "severe consequences"?

15 A. Somebody thinks you're ratting somebody off in  
16 jail, they're going to beat the crap out of you, maybe  
17 stab you, who knows?

18 Q. Now, before December 13th, 2001, had you ever  
19 been in jail?

20 A. Yep.

21 Q. How many times?

22 A. Quite a few.

23 Q. Did you say quite a few? I couldn't hear you?

24 A. Probably a few. I can't be sure.

25 Q. More than ten?

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1 A. I don't know. Look at my record. I'm not sure.

2 Q. You've been arrested of things before -- arrested  
3 for things, rather, before December 13th, 2001?

4 A. Yes.

5 Q. You've been in the Latah County Jail, right?

6 A. I'm sure I have.

7 Q. And you -- you testified earlier today that you  
8 spent time in foster homes as a youth; is that correct,  
9 sir?

10 A. Yep.

11 Q. Had you been in juvenile detention?

12 A. I was placed in juvenile detention, yes.

13 Q. How many times?

14 A. Four or five. They moved me around to different  
15 ones.

16 Q. How old were you on December 13th, 2001?

17 A. December 13th, 2001?

18 Q. Yes, sir.

19 A. 22 or 23, I guess.

20 Q. So, you'd -- you had had roughly four or five  
21 years to accumulate time in adult jails; is that  
22 correct, sir?

23 A. Pretty much since I was 18, I've been in and out  
24 of adult jails.

25 Q. How many different jails had you been in and out

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1 of as of December 13th, 2001?

2 A. I think mostly the Latah County Jail and Whitman  
3 County Jail.

4 Q. So, on December 13th, 2001, you were aware of  
5 what you termed "severe consequences" for being a  
6 snitch, right?

7 A. Excuse me?

8 Q. On December 13th, 2001, you were aware that  
9 inmates could suffer severe consequences for being a  
10 snitch?

11 A. Yeah. I've seen people get the living crap beat  
12 out of them because somebody assumed they told on  
13 somebody.

14 Q. And you had that knowledge for quite a while  
15 before December 13th, 2001; isn't that correct, sir?

16 A. It's common sense, you go to jail, you don't tell  
17 on people.

18 Q. I believe, sir, you testified in response to one  
19 of Ms. Evans' questions that you were worried about your  
20 family in connection with the statement you made to your  
21 ex-wife, Kim; is that correct, sir?

22 A. I was worried about if my family may have said  
23 something or known something, that somebody might come  
24 after them for what they might know.

25 Q. And that's why you told Kim not to do that,

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right?

A. I don't remember saying that to Kim, but I remember saying it to other people. After I divorced Kim, I don't even remember ever speaking to her.

Q. When did you divorce Kim?

A. I believe it was in August of that year, 2001, I believe.

Q. August 2001?

A. 2001, 2002. I don't remember what year. But I know after I divorced her, I haven't spoke to her, not even once.

Q. Never a single time?

A. No.

Q. Do you and she have any children in common?

A. No.

Q. Were you divorced from Kim before or after Tonya Hart's murder?

A. I believe it was after.

Q. So, at the time of Tonya Hart's murder, you were still married to Kim?

A. I was married to Kim for two months. No, I wasn't.

Q. So, you were divorced from Kim before Tonya Hart's murder?

A. I don't remember the times I was married to

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Kimberly Jondro, but I know I wasn't married to her during the time of Tonya Hart's murder. And after I divorced her, I had nothing to do with her, never spoke with her. I might have seen her once or twice in Lewiston passing by.

Q. Can you spell her last name for me, her maiden name?

A. J-O-N-D-R-O. I don't know.

Q. Where did you and she get married?

A. At the homeless shelter, Sojourners Alliance.

Q. So, you never made any statement to your ex-wife, Kim, that it was wise not to say anything?

A. No, I don't believe I did say anything to her about it.

Q. Well, I don't believe. Did you or didn't you?

A. I don't believe I did.

Q. Can you be any more specific than that?

A. No.

Q. Well, it seemed like a minute ago you said, I never said anything to her after I divorced her.

A. I never said anything to her after I divorced her, so no. Take it as you want.

Q. So, you never then -- you never told her that it was wise not to say anything about Tonya Hart's murder?

A. I don't think I did.

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Q. Were you, in fact, concerned about your family's safety around the time of Tonya Hart's murder?

A. Yeah. Everybody had their own speculations as to what happened. Everybody was talking about Tonya Hart's murder. That was a big thing around here.

Q. Describe, please, the Subaru that you owned?

A. It was a 1973 four-door GL Subaru.

Q. Did your brother, George, have one that looked like it?

A. I had three of them. I let George use one of mine. And, yes, they were all the same year, same color. The only difference is one had tinted windows.

Q. Is that the one you drove daily, the tinted windows one?

A. I drove all three of them. One would break down, I'd take parts, swap them back and forth and make the other one run.

Q. December 2001, did you -- did you own all three Subarus then?

A. Yeah.

Q. December 2001, were you letting George use any one of the three?

A. Yeah.

Q. December 2001, were any of the three broken down?

A. I think one of them was.

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Q. Where did you keep the one -- you describe a pattern where one would break down and you'd take parts, make another one run. Where would you keep the one -- the one or ones that were broken down?

A. Joy and Shalako's apartment complex in the parking lot right outside their apartment.

Q. On December 11th, 2001, you -- you parked in Joy and Shalako's parking lot; is that right?

A. I believe so, yeah.

Q. Was one of your other Subarus there?

A. I think they were all there.

Q. All three of them?

A. I think so. I know at one point, around that time, I loaned George one of my cars. He used it for a while, and then he dropped it back off and left it in the parking lot. I don't know the dates or times when I loaned it to him, but I do know I loaned it to him.

Q. Do you remember in December of 2001 -- or rather specifically, December 11th, 2001, if more than one of your Subarus was in running condition?

A. Yeah, I think so. I think two of them were.

Q. And were you driving them both, or had you loaned one to George or someone else?

A. I don't remember the times I loaned them to George, but I know I was driving one of them.

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1 Q. Do you know which one you were driving?

2 A. They all looked the same. I mean, probably the  
3 one -- I think it was the one without the tinted  
4 windows.

5 Q. So -- and that was two of them, right?

6 A. Actually, I'm pretty sure it was the -- I'm  
7 positive it was the one without the tinted windows  
8 because the other one -- well, the one without the  
9 tinted windows, the water pump went out, and I had to  
0 pull a water pump off one of them and put it on there.

1 Q. So, the night of September (sic) 11th, 2001, when  
2 you were in the parking lot of Joy and Shalako's  
3 apartment, you were in one of your Subarus that did not  
4 have the tinted windows?

5 A. Yeah.

6 Q. Was there anything that would differentiate that  
7 Subaru from your third Subaru, which then also didn't  
8 have tinted windows?

9 A. I don't think so. I think two were four-door and  
0 one was a two-door.

1 Q. Did the two-door have tints or no tints?

2 A. The two-door was a straight parts car. I think I  
3 drove it there, it never ran again, and I just pulled  
4 parts off of it.

5 Q. When you say "there," what do you mean?

293

1 A. There is Joy and Shalako's apartment complex.

2 Q. How many -- what length of time was the  
3 non-running vehicle at Joy and Shalako's apartment  
4 complex?

5 A. Long enough for it to make them mad for me  
6 leaving it there.

7 Q. Weeks?

8 A. I don't know.

9 Q. Months?

10 A. Probably weeks.

11 Q. What did you do at the end of those weeks?

12 A. What did I do with the cars?

13 Q. Did you -- the non-runner. Did you move it?

14 A. Left them there. They weren't in my name, so I  
15 left them there.

16 Q. Oh, so you're not the one who moved it away after  
17 the weeks were up?

18 A. No.

19 Q. Do you remember when it was moved away?

20 A. The one Subaru, the police impounded because I  
21 was in a chase with them. And I don't know what  
22 happened to the other two.

23 Q. Which one did the police impound?

24 A. I believe it was the one with the tinted windows.

25 Q. And that was a four-door?

294

1 A. Yes.

2 Q. Was -- and so, the one the police impounded, it  
3 had tinted windows, so it couldn't have been the one you  
4 were driving on the night of the Tonya Hart's murder,  
5 correct?

6 A. I don't know which one. I know the one I was --  
7 that I was driving on Tonya Hart's murder didn't have  
8 tinted windows. I drove whatever car I could get  
9 running that day --

10 Q. But you could only get --

11 A. -- is what it comes down to.

12 Q. I'm sorry, sir. Go ahead.

13 A. There was two that always ran.

14 Q. So, you --

15 A. If one didn't run, I'd make the other one run.  
16 If one died, I'd make the other one run.

17 Q. You owned three, right?

18 A. Right.

19 Q. All 1973 Subarus, right --

20 A. Yeah.

21 Q. -- is that correct?

22 A. Yeah, that's correct.

23 Q. All GL models, right?

24 A. All GL models.

25 Q. And one of them never ran --

295

1 A. Correct.

2 Q. -- right?

3 A. One ran there, and that was it.

4 Q. That was the end of its running?

5 A. Yep. Took the wiring harness out and put it in  
6 another one.

7 Q. And that was the two-door, correct?

8 A. I believe so.

9 Q. So, the night of Tonya Hart's murder, you were  
10 driving the four-door without tinted windows, right?

11 A. Yeah.

12 Q. Prior to the time that you stole Jeremy White's  
13 briefcase of marijuana, had you ever smoked marijuana?

14 A. Oh, yeah.

15 Q. How many times?

16 A. Well, a lot. I mean, I liked to party, drink  
17 beer and smoke weed. That's what I do.

18 Q. How many years had you been smoking marijuana  
19 prior to the time you stole Jeremy White's briefcase?

20 A. Off and on since I was about 15 or 16 years old.

21 Q. So, that would have been roughly eight years?

22 A. Roughly.

23 Q. And, sir, during those eight years, had you ever  
24 made any transaction to acquire marijuana?

25 A. Yeah.

- 1 Q. Were you familiar with the quantities of  
2 marijuana?  
3 A. Yeah.  
4 Q. Could you look at a baggy of marijuana and say,  
5 that's an eighth?  
6 A. No.  
7 Q. Could you look at a --  
8 A. Well, an eighth or a gram, yeah. But higher  
9 amounts, it just depends on what kind of pot you got.  
10 Q. Okay. Could you look at a quantity of marijuana  
11 and say, that's a -- that's a quarter ounce?  
12 A. Just depends on what you got. I mean, some bud  
13 is fluffier than others. Some weighs heavier than  
14 others. Depends.  
15 Q. How much marijuana did you get from Jeremy  
16 White's briefcase?  
17 A. It was a pencil box about this big (indicating),  
18 and it was in one bag packed full. I mean, I'm guessing  
19 an ounce or more.  
20 Q. Take that Kleenex box next to you. Compare for  
21 me that box to the box that you got out of Jeremy  
22 White's briefcase.  
23 A. Well, it was smaller. It wasn't as tall as this  
24 or as thick as this, and the bag fit right in the box.  
25 Q. Was it -- was it a Ziplock bag?

- 1 A. No, it wasn't.  
2 Q. Ordinary plastic bag?  
3 A. It was a big sandwich bag.  
4 Q. And I'm sorry, sir, I didn't catch the -- did you  
5 say about an ounce?  
6 A. About.  
7 Q. What was the street value of that amount of  
8 marijuana in December of 2001?  
9 A. Don't know. I very rarely paid for it.  
10 Q. Did you ever pay for marijuana?  
11 A. Occasionally.  
12 Q. Well, I believe you told Ms. Evans that you stole  
13 the marijuana because you were broke and homeless; is  
14 that right, sir?  
15 A. Yep.  
16 Q. And so, you must have wanted to get things of  
17 value in exchange for the marijuana, right?  
18 A. Yeah.  
19 Q. Do you have any estimate at all of the value --  
20 the dollar value of the marijuana that you took from  
21 Jeremy White?  
22 A. I guess maybe 200, 225 bucks.  
23 Q. What time of the day was it when you made the  
24 theft of the marijuana?  
25 A. Right before dark.

- 1 Q. Sir, what subsequently happened to that  
2 approximately one ounce of marijuana?  
3 A. Traded half of it for a tattoo I never got, and I  
4 think I smoked the other half, gave it to friends,  
5 whatever.  
6 Q. Let me focus for a minute on the half you traded  
7 for the tattoo. When did you make that trade?  
8 A. Later on that night.  
9 Q. The night of the theft?  
10 A. Yep. We discussed trading it for a tattoo. I  
11 never actually got a tattoo for it.  
12 Q. And that was to Sarah Dalbec, right?  
13 A. Yeah.  
14 Q. Why didn't you get the tattoo?  
15 A. Just never around long -- never around in one  
16 place long enough to sit and do it, I guess. I don't  
17 know.  
18 Q. Did you ask her for it subsequently?  
19 A. What's that?  
20 Q. Did you ask -- after you made the trade, did you  
21 ask Sarah Dalbec, hey, give me a tattoo, you owe me?  
22 A. Never asked her to give me a tattoo she owed me.  
23 Still haven't to this day.  
24 Q. Now, you indicated you smoked the other half?  
25 A. Yep.

- 1 Q. Did you smoke it that night?  
2 A. A good part of it. I mean, the next couple days,  
3 run into friends, they wanted a bud, give them a bud  
4 here and there, smoked some of it with them, whatever.  
5 Q. I believe you described an event where you were  
6 with Sarah Dalbec partying overnight?  
7 A. Yep.  
8 Q. Do I have that right, sir?  
9 A. Yeah.  
10 Q. Did you smoke that half of weed -- rather, during  
11 that event with Sarah Dalbec, did you --  
12 A. That night, we smoked hers, because I only had  
13 half of it with me, what I gave her. The other half was  
14 in my car.  
15 Q. So, you didn't smoke your remaining half the  
16 night you were partying with Sarah?  
17 A. I had some of my own pot that I had already. I  
18 always had something on me in those days.  
19 Q. And did you smoke that?  
20 A. I smoked some of mine, and she smoked some of  
21 hers. I mean, matched bowls, I mean.  
22 Q. I believe you described other people coming in  
23 and out of the residence; is that right?  
24 A. Yep.  
25 Q. You've got to be audible.

300

1 A. Yes.

2 Q. And that was at Sarah Dalbec's place; is that  
3 correct, sir?

4 A. Yeah. There were some people already there.  
5 Some of the people there were coming and going, or, you  
6 know...

7 Q. Did you give any of those people some of the  
8 marijuana you had stolen from Jeremy White?

9 A. I don't think so. I think I smoked some of what  
10 I had of my own already with them before I stole  
11 Jeremy's stuff. But I mean, I had a little -- just a  
12 minor amount. I mean, but...

13 Q. What's a minor amount to you?

14 A. Half an eighth, less than half an eighth.

15 Q. How long did it take you to go through, consuming  
16 or giving away, the marijuana that you had stolen from  
17 Jeremy White?

18 A. Couldn't tell you.

19 Q. Days?

20 A. Could have been one or two days. Could have been  
21 the next day. I don't know. Just depends on who all  
22 around how much you go through.

23 Q. Wouldn't have been a week, though, right?

24 A. Wouldn't think so. I mean...

25 Q. It just wouldn't last that long, right?

301

1 A. Sometimes I made less last longer. I don't know.

2 Q. December 11th, 2001, were you employed on that  
3 date, sir?

4 A. I don't believe so.

5 Q. Again, referring you to December of 2001, what  
6 was the last job you had had prior to December 11th,  
7 2001?

8 A. Couldn't tell you.

9 Q. What kind of work did you do at that time?

10 A. Mostly construction. I worked with my mother for  
11 a little bit. She had a cleaning business.

12 Q. Are you able to name a person who employed you  
13 for construction in the year 2001?

14 A. Nope. It's pretty much they had a spot job list  
15 at the Job Service, go in there, ask them if they got  
16 any spot jobs for today. If I needed money, I went out  
17 on a spot job, paid 50, 60 bucks.

18 Q. Construction is generally slow in this area in  
19 December, correct?

20 A. Yeah.

21 Q. That was true in 2001 as much as today, isn't it?

22 A. I don't think so.

23 Q. Was it common for you --

24 A. The past five or six years, construction's pretty  
25 much nothing around here compared to what it used to be.

302

1 Used to be you could just walk up on a job site, hey, I  
2 need a job, good, get to work, you know. Now people are  
3 just cutting -- our economy sucks. Nobody wants to pay  
4 for anybody to work, you know. I mean, there ain't  
5 nothing going on work-wise around here now compared to  
6 what it used to be.

7 Q. What about December 2001? Could you get a job --  
8 get work that easily then?

9 A. If I needed to make money, it wasn't hard for me  
10 to find a job somewhere with somebody.

11 Q. The Subaru, four-door without the tinted windows  
12 you were driving on December 11, 2001, which headlight  
13 was broken?

14 A. I believe it was the passenger's side.

15 Q. How long had that light been out?

16 A. Not long.

17 Q. Did you ever fix it?

18 A. Nope.

19 Q. What -- is that the car that got seized after an  
20 eluding chase?

21 A. I already told you the one with tinted windows is  
22 the one I eluded the cops in.

23 Q. I'm sorry, I didn't hear you.

24 A. The one that got seized was the one with the  
25 tinted windows.

303

1 Q. Okay. So, the one you were driving on

2 December 11th, 2001 did not have the tinted windows; you  
3 never fixed the headlight on that car. What happened to  
4 it?

5 A. I don't know. I left it in Joy's parking lot.

6 Q. When did --

7 A. Got towed off. Call the manager of the building  
8 and ask them what happened to it.

9 Q. When did you leave it in Joy's parking lot?

10 A. I don't know.

11 Q. When was the last time --

12 A. I remember I got in trouble for evading police,  
13 they towed -- they impounded the one car. And pretty  
14 much, they all looked the same; they were known by the  
15 cops, so I quit driving all of them. The one got  
16 impounded. The other one -- the other two, I left. If  
17 you look at my record, that's a habit of mine. Cops  
18 know my car. I get rid of it. I get another one.

19 Q. The car you were driving on the night of Tonya  
20 Hart's murder, December 11th, 2001, when's the last time  
21 you drove that car?

22 A. Don't know.

23 Q. Was it 2001?

24 A. Could have been.

25 Q. Was it 2002?

304

1 A. Could have been.

2 Q. What was the year of the event where the other  
3 car, the car with the tinted windows, was seized?

4 A. I believe it was 2001. I don't know. 2001,  
5 2002. Who knows? I don't remember.

6 Q. Was it before or after Tonya Hart's murder?

7 A. I don't remember. I know it was wintertime. I  
8 outran the cops because I put it into a snowbank, got  
9 out and took off running through a field, went and hid  
10 in Patsy Clark's garage.

11 Q. You said Patsy Clark. Is that the same person as  
12 Patsy Butler?

13 A. Yep.

14 Q. I'm sorry?

15 A. Yes.

16 Q. How long did you hide in her garage?

17 A. Pretty much 'til I seen the lights come on in her  
18 trailer. Then I knocked on her door. I knew they had a  
19 wood stove in the garage. People drank out there late  
20 hours of the night. It was a warm place. So, I seen  
21 the lights come on in her trailer, knocked on her door,  
22 asked her to take me to Moscow.

23 Q. What did -- what did she do?

24 A. Took me to Moscow.

25 Q. Did you speak to her about Tonya Hart's murder?

305

1 A. Nope.

2 Q. Did she tell you not to return to her garage?

3 A. Yeah. She was pretty upset about me hiding from  
4 the cops in her garage, yeah.

5 Q. Your stepfather -- stepfather, Jerry, what's his  
6 last name, sir?

7 A. Thompson.

8 Q. Do you remember what year he passed away, sir?

9 A. Nope.

10 Q. Did he live in Latah County when he died?

11 A. Up on Polk Extension.

12 Q. How long did you live in Jerry Thompson's home on  
13 North Polk Extension?

14 A. Four, five, six years. Quite a few years.

15 Q. What ages were you, sir?

16 A. 17 'til -- actually, 16. 16 or 17 'til 20

17 something. I don't know. The whole time my mom was  
18 married to him, we were living there off and on, all us  
19 kids.

20 Q. Did you share a bedroom with anyone?

21 A. There was only one extra bedroom there, so yeah.

22 Q. Who?

23 A. Mainly, we slept in the garage. But if we slept  
24 in the house, my sisters had one bedroom up in the house  
25 for them. And I'd sometimes sleep on their floor, the

306

1 couch, the garage, whatever.

2 Q. Was there a bed in the garage?

3 A. The garage was turned into kind of a room itself.  
4 It was drywalled. Jerry put a wood stove in there.  
5 That's mainly where us boys stayed at.

6 Q. Us boys, which boys?

7 A. Me, my -- and my two brothers and Mikey.

8 Q. Could you name your two brothers, sir?

9 A. Jimmie and George.

10 Q. When's the last time you talked to George?

11 A. Christmastime last year.

12 Q. You persisted --

13 A. Well, the year before last, let me say. It  
14 wasn't this past Christmas, but the Christmas before  
15 that.

16 Q. So, it was Christmas 2009?

17 A. Yeah.

18 Q. Has George sent you any letters while you've been  
19 incarcerated?

20 A. Yes.

21 Q. When was the last time George sent you a letter?

22 A. Right before he went from Maryland back to -- out  
23 here to Idaho. He wrote me a letter, said he was doing  
24 good there, everything was fine. That was the last  
25 letter I got from him.

307

1 Q. What town in Maryland did the letter come from?

2 A. Brunswick.

3 Q. When was that letter sent, sir?

4 A. It was when I was on the farm, so -- I was only  
5 on the farm for about a month-and-a-half. So, look at  
6 the records and you'll see.

7 Q. Sir, I believe you testified in response to one  
8 of Ms. Evans' questions that you persisted when Joy did  
9 not want to take you to Jeremy White's home. Do you  
10 remember that testimony, sir?

11 A. Yeah.

12 Q. Did that event occur in 2001?

13 A. I believe so.

14 Q. How --

15 A. It was days before -- days or weeks, something  
16 like that, before Tonya Hart's murder. I don't remember  
17 the year. I remember events and what happened around  
18 it, but I don't remember the years.

19 Q. So, you went to Jeremy White's apartment days or  
20 weeks before Tonya Hart's murder?

21 A. Yeah.

22 Q. I'm sorry?

23 A. Yeah, it was sometime before her murder when I  
24 went there with my sister.

25 Q. Well -- but, sir, you said sometime. And then a

308

1 minute ago, you said days or weeks. Which is it?

2 A. Yeah, sometime. Make your own assumption. I  
3 don't know.

4 Q. Was it days, sir?

5 A. I don't know.

6 Q. Was it weeks?

7 A. It could have been a couple days. It could have  
8 been a week.

9 Q. No more than seven days?

10 A. Make your own assumption.

11 Q. More than two weeks?

12 A. Make your own assumption. I don't know.

13 Q. Could it have been more than two months?

14 A. I'm telling you it was -- no, it wasn't more than  
15 two months. But I know it was right around the time  
16 Tonya was murdered, just before she was murdered. I  
17 knew Jeremy Fro sold pot. I had a motive to go -- I had  
18 not a motive, but a way to go get money, make money. I  
19 never would have kept it. If I could find out where he  
20 kept it, I'd go in there and steal it and then go do  
21 what I wanted with it.

22 Q. Is that why you persisted when Joy didn't want to  
23 take you over there?

24 A. Yeah. I'm pretty sure Joy knew what I wanted to  
25 do?

309

1 Q. Do you think Joy knew you'd steal Jeremy White's  
2 pot?

3 A. Everybody knows I rip people off. My sister  
4 known that. She didn't trust me to take her around  
5 anybody she knew that did -- had anything to do with  
6 drugs.

7 Q. Did your sister have a peculiar way of  
8 introducing you to people?

9 A. Not really. I don't know.

10 Q. Did she introduce you to people saying, this is  
11 my brother, Lane, he might steal from you?

12 A. Yeah, she said that a few times to people.

13 Q. In what year? Do you remember?

14 A. She probably said it a couple months before I  
15 went to jail this last time for all I know. I mean...

16 Q. Was she using that -- that style of introduction  
17 even in 2001?

18 A. I think so.

19 Q. Did you talk with Joy in 2001 about wanting to  
20 steal marijuana from Jeremy White?

21 A. Nope.

22 Q. Sir, are you able to -- well, let me ask you a  
23 preliminary question. I believe you testified in  
24 response to one of Ms. Evans' questions that when you  
25 went to Jeremy White's house, there were people present

310

1 in the house other than you; your sister, Joy; and

2 Jeremy White?

3 A. Yeah.

4 Q. That's correct, isn't it?

5 A. Yeah.

6 Q. Can you name any of those people?

7 A. I didn't know who all was there. I didn't know  
8 anybody there. I just knew -- knew of Jeremy.

9 Q. Guys -- there was guys playing computers, right?

10 A. Yeah. The place looked like a frickin' computer  
11 lab.

12 Q. And, sir, are you able to estimate the number of  
13 other people in the home?

14 A. Two, three, four. A couple.

15 Q. Could it be more than four?

16 A. I don't know. Could have been.

17 Q. Do you recall Ms. Evans asking you a few moments  
18 ago about going to the Ernst parking lot and -- to steal  
19 drugs?

20 A. Yeah.

21 Q. Now, sir, what -- what year was that event?

22 A. I don't remember.

23 Q. How -- was it before or after Tonya Hart was  
24 murdered?

25 A. I'm pretty sure before.

311

1 Q. Was it more than a year before?

2 A. I'm pretty sure, yeah.

3 Q. Could it have been more than two years before?

4 A. I don't know.

5 Q. That event, sir, the Ernst parking lot event, did  
6 it occur in the summertime?

7 A. Yeah.

8 Q. You -- you rode there in a black Ford Ranger,  
9 correct, sir?

10 A. Yep.

11 Q. Not your car?

12 A. Yep.

13 Q. Belonged to one of the two other guys?

14 A. No, it belonged to the guy who was driving it. I  
15 don't know who he was.

16 Q. I'm sorry, I thought you had previously testified  
17 there were only three people in that car?

18 A. I testified that me and two other guys went there  
19 to take -- pretty much rob Jake Butler. I never  
20 testified to whether there was three, four, 20 of us in  
21 the rig.

22 Q. How many were in the rig?

23 A. There was four of us.

24 Q. The driver, you and two muscle guys, right.

25 A. If that's what you want to call them.



312

1 Q. Well, I call them muscle guys because you relied  
 2 on them to do the thieving, correct, sir?  
 3 A. Yeah.  
 4 Q. You didn't do the thieving yourself?  
 5 A. Nope.  
 6 Q. But you went there with the intent to commit a  
 7 theft?  
 8 A. Yep.  
 9 Q. And your target was Jake Butler?  
 10 A. Yep.  
 11 Q. You're the one who set up the Ernst event with  
 12 Jake Butler on the phone, right?  
 13 A. Yep.  
 14 Q. And when you set it up with him, you knew that  
 15 you were going to steal from him?  
 16 A. Oh, yeah.  
 17 Q. How much money did you expect to get?  
 18 A. Five, 600 bucks, a couple ounces of weed.  
 19 Q. Did you say anything to Jake Butler to indicate  
 20 how much marijuana or cash you were expecting to deal in  
 21 that day?  
 22 A. I told him to bring at least an ounce.  
 23 Q. And you -- you told him that you were going to  
 24 buy the ounce from him, right?  
 25 A. Yep.

313

1 Q. Why did you think he was going to have cash?  
 2 A. Jake Butler sold a lot of weed in this area then.  
 3 He always had cash on him. He was always going places,  
 4 let people -- pretty much showing women and anybody he  
 5 was around that he had money. He wasn't afraid to let  
 6 people know he had money.  
 7 Q. When you got there, why did only the two other  
 8 guys go over to Jake's car?  
 9 A. Because I didn't want to rob him.  
 10 Q. Why not?  
 11 A. Why not? If I don't have to do it, why not let  
 12 somebody else do it?  
 13 Q. What kind of car was Jake driving?  
 14 A. Volkswagon Jetta.  
 15 Q. Do you remember the year of the car?  
 16 A. No.  
 17 Q. Do you remember if it was new or old?  
 18 A. It was just a blue Jetta.  
 19 Q. Did it have any distinguishing characteristics?  
 20 A. Nope.  
 21 Q. Chrome striped?  
 22 A. Nope.  
 23 Q. Fancy wheels?  
 24 A. It had decent wheels on it, but nothing I would  
 25 call fancy.

314

1 Q. When you say "decent," do you mean the wheels  
 2 of --  
 3 A. Other than stock wheels.  
 4 Q. They were non-stock?  
 5 A. Yeah.  
 6 Q. How long were the two other guys inside Jake's  
 7 Jetta?  
 8 A. The two guys that went over and took -- and  
 9 robbed him?  
 10 Q. Yeah.  
 11 A. A couple minutes.  
 12 Q. When was it that you learned that Jesse Linderman  
 13 had been inside that car?  
 14 A. It was probably days later.  
 15 Q. Who did you learn that from?  
 16 A. I heard rumors that Jesse supposedly got pistol  
 17 whipped during that robbery. And then that's when I  
 18 found out that Jesse was in the car.  
 19 Q. Who did you hear the pistol whipped information  
 20 from?  
 21 A. Just people on the street talking about it,  
 22 wanting to know if I had anything to do with it. That's  
 23 pretty much it.  
 24 Q. When you were asked if you had anything to do  
 25 with it, what did you answer?

315

1 A. Told them I didn't know those guys had -- were  
 2 planning on robbing him.  
 3 Q. And that -- that was a lie, right?  
 4 A. Oh, yeah.  
 5 Q. On the night of Tonya Hart's murder, you left Joy  
 6 and Shalako's apartment to go and buy beer; is that  
 7 correct, sir?  
 8 A. Yep. Went up to the gas station right up the  
 9 road about a block away.  
 10 Q. What's the name of that gas station, sir, in  
 11 2001?  
 12 A. I believe it was Sunset Mart then. Or we  
 13 referred to it as Fairco.  
 14 Q. So, you didn't have to get on State 8 to get to  
 15 that gas station, right?  
 16 A. Nope.  
 17 Q. You just stayed on White Avenue? Is that what  
 18 that is?  
 19 A. I believe that's the name of the road.  
 20 Q. And where did you get the money for the beer?  
 21 A. Just had some change in my pockets.  
 22 Q. What kind of beer did you buy?  
 23 A. I don't remember. I remember I bought -- it was  
 24 either Steel Reserve or something like that. A buck  
 25 twenty for a big beer. So, some kind of cheap malt

316

1 liquor?

2 Q. Did you -- how much did you buy of beer?

3 A. Just one.

4 Q. Did you share?

5 A. Nope.

6 Q. Did you drink it all?

7 A. Drank it all on the way back to Joy's.

8 Q. You didn't bring it inside Joy's?

9 A. Joy didn't allow me to drink in her apartment, so  
10 no.

11 Q. Sir, you described a lot of driving in that -- in  
12 the vicinity that night, December 11th, 2001, including  
13 trips out -- a trip out to Troy, right?

14 A. Yep.

15 Q. And then you drove out North Polk Extension?

16 A. Yep.

17 Q. And you drove, of course, to the Sunset Mart?

18 A. Yep.

19 Q. Where did you get the gasoline for your car?

20 A. It's not hard to syphon gas out of somebody's  
21 car.

22 Q. So, you didn't make a habit of paying for gas?

23 A. I didn't pay for nothing I didn't have to.

24 Q. Sir, I believe you testified to Ms. Evans that  
25 you had been on a binge in regard to her question about

317

1 the white under your eyes. Do I have that right, sir?

2 A. Yeah.

3 Q. Now, we know already from your testimony that  
4 you -- that night, December 11th, 2001, you consumed the  
5 one bottle of malt liquor, right?

6 A. Yep.

7 Q. Now, what else had you consumed, sir?

8 A. Probably smoked some pot. I know I was burnt out  
9 from the day before from a lot of drinking, smoking  
10 meth. I mean, just -- I don't know. I drank a lot. I  
11 did a lot of drugs in those days. I mean, it was as a  
12 daily thing for me.

13 Q. And the binge -- the binge that you were  
14 referring to in connection with the testimony about the  
15 whites under your eyes, that -- that binge started the  
16 day before Tonya Hart was murdered?

17 A. Probably started days before, days and days  
18 before. I go three, four weeks sometimes of just  
19 straight, nonstop drinking. And I still do.

20 Q. And on December 11th, 2001, when you went to Joy  
21 and Shalako's, you slept some in your car in that  
22 sleeping bag, right?

23 A. Yep.

24 Q. How many hours did you sleep?

25 A. I was probably outside an hour-and-a-half, two

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1 hours maybe, before Shalako came out and said, come  
2 inside.

3 Q. Did you run your car the whole time?

4 A. I'd start it up, let it run for awhile until it  
5 got warm inside, and then I'd shut it off sometimes.  
6 Then I'd start it up again if I needed to.

7 Q. When you came back in -- or rather, you were  
8 allowed into the apartment to sleep, did you go to sleep  
9 right away, or did you go to the gas station first?

10 A. No. I tossed and turned on the couch for quite  
11 awhile. I mean, I couldn't fall asleep. I mean, I  
12 don't know if you've ever experienced anybody that's  
13 burning out on meth. It's not easy to fall asleep right  
14 away. Your skin's crawling. Your skin's all itchy.  
15 You're sweating. I mean, usually if I stayed up the  
16 night before and partied and had to stay up the next day  
17 with nothing to keep me awake, I mean, I'd end up  
18 popping a bunch of pills or getting drunk to go to  
19 sleep.

20 Q. Is that why you went to get the malt liquor?

21 A. Yeah.

22 Q. Did you bring the sleeping bag inside?

23 A. I believe I did. It was Shalako's sleeping bag,  
24 I mean.

25 Q. So, he came out --

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1 A. Or his blanket. I don't remember if it was a  
2 sleeping bag or blanket, but it was their's.

3 Q. So, when he came out to get you, you brought the  
4 sleeping bag or blanket back inside?

5 A. I'm pretty sure I did.

6 Q. Now --

7 THE WITNESS: I don't mean to interrupt you,  
8 but can we take another bathroom break? I've got to go  
9 to the bathroom again.

10 MR. WHITNEY: Absolutely. We can take all  
11 the breaks you want if the judge says so.

12 THE COURT: Sure. Why don't we go ahead and  
13 take about a ten-minute break, and we'll resume then.

14 (COURT IN RECESS.)

15 THE COURT: Go ahead and be seated everyone.  
16 And we're going to go ahead and go back on the record.

17 Mr. Whitney, you may continue to inquire

18 MR. WHITNEY: Thank you.

19 BY MR. WHITNEY:

20 Q. Mr. Thomas, when we took a break, you were  
21 answering questions about the binge. Now, this may be a  
22 repetition. I just want to try and pick up where we  
23 left off as much as possible. I believe you testified  
24 that you went and got the beer to help you go to sleep?

25 A. Yeah.

320

1 Q. That's right?

2 A. Yep.

3 Q. And that's -- you're at Tonya -- you're at Joy  
4 and Shalako's apartment on the night of December 11th,  
5 2001, correct?

6 A. If that was the night Tonya was shot, yes.

7 Q. All right. And so, you were at Joy and Shalako's  
8 apartment the night Tonya was shot, correct?

9 A. Yes.

10 Q. All right. Now, sir, you described a minute ago  
11 when the binge began. I want to ask you, when did that  
12 binge end? Was that the end at Joy and Shalako's  
13 apartment?

14 A. Oh, no. I mean, it was -- I'm pretty sure it  
15 wasn't. I mean, I'd go through periods where I'd drink  
16 for weeks at a time. I mean, it's -- I can't tell you  
17 how long they run or whatever. I mean, sometimes I go  
18 two, three days drinking; sometimes I go a month,  
19 month-and-a-half nonstop drinking.

20 Q. But in December 2001, you -- you didn't drink  
21 with Joy and Shalako, did you?

22 A. No. They were -- they never drank with me. They  
23 never let me drink in their place. I mean, they were  
24 pretty protective of anybody drinking around their kid.  
25 If you had a few drinks and been in their -- you know,

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1 and then gone to their apartment, if you maintained  
2 yourself, then they were okay with it. But I've never  
3 once drank with them or around -- in their apartment  
4 because their kids were always there.

5 Q. And how many kids did they have on the night of  
6 Tonya Hart's murder when you slept there?

7 A. I believe -- I believe they had Charlotte then.  
8 Or not Charlotte, Jake.

9 Q. Certainly, your sister, Joy, didn't let you smoke  
10 marijuana in her apartment, right?

11 A. No.

12 Q. And she didn't smoke marijuana with you in her  
13 apartment, right?

14 A. No.

15 Q. And she certainly didn't smoke meth with you  
16 there, right?

17 A. No. Joy is against methamphetamines. She highly  
18 opposes it.

19 Q. I want to switch your attention to the testimony  
20 you gave about your conversation with Don King following  
21 your arrest on a bench warrant. Do you remember  
22 answering questions for Ms. Evans about that occurrence?

23 A. Yeah.

24 Q. And you were arrested on a bench warrant after  
25 Tonya Hart was murdered, right?

322

1 A. I believe so.

2 Q. Not long after, right?

3 A. Yeah, I believe so.

4 Q. Weeks?

5 A. Couple weeks, a few weeks.

6 Q. Don King came down to see you in the Latah County  
7 Jail?

8 A. Brought me up to the Sheriff's Office from the  
9 jail.

10 Q. Where did he take you inside the Sheriff's  
11 Office?

12 A. Some little interrogating room they have.

13 Q. Was anyone else with him?

14 A. When he was asking me questions, it was just me  
15 and him, but I don't think anybody else was with him.

16 Q. Were you wearing an orange jumpsuit?

17 A. I'm pretty sure I was. I was in jail.

18 Q. How long had you been in jail?

19 A. Couple days maybe. I don't know.

20 Q. Did he tell you any information about the facts  
21 of Tonya Hart's murder?

22 A. The main thing I remember is that he pulled out a  
23 little vial that had two bullets in it. He asked me if  
24 I knew what they went to. I thought they went to a 38  
25 or something like that. Like I said, I have not -- I

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1 have no knowledge of handguns really. I've never used  
2 handguns.

3 And I believe at that time is when I learned that  
4 it was a nine-millimeter that was used to kill Tonya. I  
5 could be wrong, but I believe that's when I learned that  
6 she was shot with a nine-millimeter.

7 Q. And was it Don King who told you she was shot  
8 with a nine-millimeter?

9 A. Could have been. I'm pretty sure it was.

10 Q. Did he tell you anything else about the murder of  
11 Tonya Hart?

12 A. I don't remember really much the details of what  
13 we talked about.

14 Q. What did he tell you about the vial with the two  
15 bullets in it?

16 A. He asked me if I knew what kind of bullets they  
17 were. Told him I thought they were a 38. He asked me  
18 to pick them up and look at it. I refused to touch the  
19 vial. He took it back, put it in his pocket. And I  
20 believe that's when I learned that they were  
21 nine-millimeter bullets.

22 Q. Did he -- did he tell you that she was shot in  
23 the head?

24 A. I believe he said it was a nine-millimeter weapon  
25 used to shoot Tonya.

324

Q. But did he tell you that she was shot in the head?

A. I think he did.

Q. Did he tell you that she was shot in the face?

A. I think it was just she was shot in the head and chest, is what he said. He didn't get into details about nothing.

Q. Did he tell you about the murderer's flight path from the scene of the crime?

A. I don't remember when or if he told me about the alleged footprints going through the snow, but he could have. He might have. I don't know.

Q. Did he tell you about drug use by Jesse Linderman?

A. I don't think so.

Q. Did he tell you about drug sales by Jesse Linderman?

A. I don't think so.

Q. Did you -- in December of 2001, did you have an awareness that drugs were being sold out of Jesse and Tonya's trailer home?

A. I never knew they lived in a trailer, so no.

Q. Did you know that Jesse Linderman sold drugs?

A. I knew periodically he sold marijuana.

Q. Did you know he sold marijuana in December

of 2001?

A. The last time I really remember speaking to Jesse was when me and Jack Ziegler went over to the White Harlem Apartments to see if we could get a bag, and he told me no. So, I don't know if he sold drugs at that time. I don't know if he had any involvement with people who sold drugs at that time. I don't know he talked to or who he hung out with at that time.

Jesse was not really a friend of mine at that point in time. He was somebody if I seen, I'd say hi to. And that was it.

Q. Well, certainly you had an awareness that Jeremy White had drugs that could be stolen, right?

A. I knew rumors that he was a pot dealer, yeah.

Q. And certainly you had an awareness that Jake Butler had drugs that you could steal, right?

A. Well, that was a long time before. I mean, that was way before Tonya's murder.

Q. So, even though in December of 2001 you still had the mindset that you'd steal drugs from people if you could, right?

A. Not in a violent way. If I can sneak and get something from somebody without them knowing that I had anything to do with it, then yeah. It was a long time before Jeremy even knew I had anything to do with that.

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326

Q. Well, you say "not in a violent way," but when you sent the two guys over to the Volkswagon in the Ernst parking lot, did you really think that it was going to be not violent?

A. I didn't think it was going to go the way it did.

Q. But you thought they were going to come back with drugs?

A. I didn't know they had weapons on them. I thought that they were going to go, and when Jake handed them the pot, they were going to bail out of the car.

Q. And you thought they were going to go and take money too, right?

A. I didn't know they were going to take the money. If they had -- if money was seen, yeah, take it.

Q. Well, how did you expect them to take the money without using violence?

A. Jake had no qualms about flashing money around. He'd pull wads of bills out of his pockets and show it to you.

Q. But, sir, that's -- that's not answering my question. I mean, if he shows you money, that's different from a person taking money. You'd agree to that, wouldn't you?

A. That it's different from someone taking money if he shows you money? If you pull out -- if I pull out a

handful of money and you take it out of my hand, you took -- you just took it from me, didn't you?

Q. And you don't think that kind of action is violent?

A. Snatching something out of somebody's hand really isn't violent to me.

Q. That if two guys go over and --

A. If they got into an altercation and started fighting over it, then, yeah, that's a violent act, which I had no part of.

Q. Just describe --

A. My only intention was to get what I felt was owed to me from Jake.

Q. Describe the two men that you sent over to the Volkswagon?

A. It was two black dudes that hung around in an apartment in Pullman that smoked a lot of weed.

Q. Were they bigger than you or smaller than you?

A. About my size. One a little smaller, I think.

Q. Muscular? Not muscular?

A. Nope. Little wiry guys.

Q. Any idea they had weapons of any kind on them?

A. Nope.

Q. So, why did you choose them to get the drugs for you?

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328

1 A. Because some -- during my time knowing them, they  
2 come up. I felt Jake Butler owed me money; that he  
3 ripped me off. And they said, hey, we'll get -- if you  
4 can get him somewhere, we'll get him to get weed out,  
5 we'll take it from him.

6 Q. And you thought that --

7 A. It was never discussed how to do it. It was  
8 never discussed to do it in a violent way. It was  
9 pretty much like if somebody handed me a bag of weed and  
10 I walked off with it.

11 Q. So, they -- they said, we'd take it from him --

12 A. Yep.

13 Q. -- right? They told you that, we'll take it from  
14 him?

15 A. Yeah.

16 Q. And you expected them to get the money too if  
17 they saw cash, right?

18 A. Yeah, just take it from him, yank it out of his  
19 hand.

20 Q. And you expected no violence to be involved in  
21 that?

22 A. Jake Butler is a chump. He's a coward. Any sign  
23 of aggression towards Jake Butler, he'll cower down.

24 Q. So, you were expecting signs of aggression?

25 A. No. Intimidation, yeah, but not aggression.

329

1 Q. Okay. So, you were expecting the two black guys  
2 to intimidate Jake Butler into giving up his cash and  
3 marijuana, right?

4 A. Pretty much.

5 Q. And that's what happened, isn't it?

6 A. I didn't know the details of what happened until  
7 later on, so...

8 Q. But that is what happened, right?

9 A. Pretty much.

10 Q. And you'd describe that as not violent?

11 A. The way they did it was violent, but that's not  
12 what my intentions were.

13 Q. Were there -- were there any other details about  
14 the murder of Tonya Hart that you learned from Don King  
15 while you were incarcerated in the Latah County Jail  
16 other than those we've already discussed?

17 A. I don't remember when I learned what details  
18 about the murder. This is something I've been following  
19 since it's happened, something I've been reading about.

20 Q. Why did you follow it?

21 A. Because an innocent white girl got killed for no  
22 reason.

23 Q. But I thought --

24 A. Everybody in Moscow was following it. This was a  
25 big thing that happened.

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1 Q. But, sir, am I wrong? Didn't you testify to  
2 Ms. Evans that it would have no more effect on you than  
3 if you were told a man got killed in China?

4 A. That's exactly what I said. But I followed it  
5 out of curiosity to see where it was going and who did  
6 it.

7 Q. Well --

8 A. And once my name got brought into it and I  
9 started being accused by people in town of it, my  
10 interest in it escalated greatly.

11 Q. But you were interested in it from the start  
12 then, right?

13 A. Just no more than anybody else.

14 Q. Now, I believe you testified to Ms. Evans that  
15 Don King -- when he interviewed you in the Latah County  
16 Jail in a small interrogation room, Don King was telling  
17 you it must have been the night of the murder?

18 A. Yeah.

19 Q. And what did he do to tell you that?

20 A. I didn't -- I flat out told him I don't remember  
21 what night it was. And he said, was it on or about the  
22 night of the murder? I said it could have been about  
23 the time of it. That's why I came to you with this  
24 information. I mean, you know how police work. If they  
25 want a certain answer, they're going to get it.

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1 Q. But the question is, what did Don King do to get  
2 you to say you had been on North Polk Extension the  
3 night of the murder?

4 A. Just pretty much implied it must have been that  
5 night.

6 Q. How did he imply it?

7 A. I don't know.

8 Q. Did he ask you the same question over and over  
9 again?

10 A. He would ask the same -- yeah, a few times, yeah.  
11 He asked me it was when I was out there.

12 Q. Did he threaten you in any way?

13 A. Nope.

14 Q. Did he Mirandize you before he questioned you?

15 A. I'm pretty sure he did. He was pretty  
16 professional about the way he came at me.

17 Q. Would you describe him as very persistent?

18 A. Yeah.

19 Q. Would you describe him as overbearing your will?

20 A. I don't know if I'd go that far, but I would

21 describe him as persistent about wanting answers.

22 Q. Did he raise his voice?

23 A. I don't think so.

24 Q. Did he mention the current charges that you were  
25 facing at that time?

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1 A. That I was facing?  
 2 Q. Yes, sir.  
 3 A. For why I was in jail?  
 4 Q. Yes.  
 5 A. I don't think so. I don't know. I don't  
 6 remember too many details about that conversation.  
 7 Q. Do you remember during that conversation being  
 8 afraid that Don King was going to charge you with the  
 9 murder of Tonya Hart?  
 10 A. I've always been worried that I might be charged  
 11 in one way or another for the murder of Tonya Hart.  
 12 Q. From the first time you heard about it?  
 13 A. No.  
 14 Q. When did it start?  
 15 A. When people started coming to me asking me if I  
 16 had involvement in it. When people on the street I  
 17 don't even know walk up to you and ask you if I knew  
 18 anything about it.  
 19 Q. So, you said you've always been worried about it.  
 20 When did always start?  
 21 A. When people started implying me as having  
 22 involvement in it.  
 23 Q. What year was that?  
 24 A. I don't know.  
 25 Q. How close after Tonya Hart was murdered did it

333

1 start?  
 2 A. It was a while after it. It was pretty much  
 3 around the time that I was taking polygraphs.  
 4 Q. Now, Don King also told you that Moscow Hide and  
 5 Fur had a camera that took photos of passing cars?  
 6 A. Yeah.  
 7 Q. That's -- that's what you testified to Ms. Evans  
 8 a few --  
 9 A. That's what Don told me.  
 10 Q. But you -- you testified to that today earlier,  
 11 right?  
 12 A. Yeah.  
 13 Q. What else did Deputy King tell you about that?  
 14 A. Well, he said he was going to try to get out  
 15 there and see if there was any pictures of my car  
 16 passing on the night that I thought that I seen the  
 17 black car out there.  
 18 Q. Did you -- did you perceive that as him being  
 19 persistent in getting you to state that you had been out  
 20 there on the night of the murder?  
 21 A. I think he could have been.  
 22 Q. Did he tell you anything else about the Moscow  
 23 Hide and Fur camera?  
 24 A. That it just took quick snapshots of people going  
 25 by. I mean, it's -- the camera was constantly on

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1 something, but it was motion activated. I mean, if a  
 2 car drove by, it got a picture of it.  
 3 Q. Did he tell you that the police already had  
 4 photographs from that camera?  
 5 A. No.  
 6 Q. Did he tell you he was going to go get them?  
 7 A. Nope. He said he was going to see if my car was  
 8 one of the cars that passed by that night out there.  
 9 Q. See your car from the Moscow Hide and Fur camera?  
 10 A. Yeah. See what night my car was out there.  
 11 Q. Now, you had a lot of subsequent contact with  
 12 police after that interview with Don King, right?  
 13 A. In what context are you referring to this as?  
 14 Q. In context to this case, the Tonya Hart murder.  
 15 A. They've asked -- they've always -- I've always  
 16 been cooperative with them when they wanted me to answer  
 17 questions against lawyer's advice and everything. I  
 18 mean, I've got nothing to hide. I had nothing to do  
 19 with this.  
 20 Q. And you -- you got interviewed at the Whitman  
 21 County Jail several times, right?  
 22 A. Yep.  
 23 Q. Did anyone ever show you pictures from a Moscow  
 24 Hide and Fur camera?  
 25 A. No.

335

1 Q. I believe you testified to Ms. Evans that your  
 2 ex-wife, Kim, made some false reports constantly?  
 3 A. Oh, yeah.  
 4 Q. Do I have that right, sir?  
 5 A. That's one of the reasons why I divorced her.  
 6 Q. Could you explain that for me?  
 7 A. Well, I used her car one night to go to Pullman.  
 8 I come back. She called the cops and told them that I  
 9 stole it from her, tried to have me arrested for grand  
 10 theft auto. The police told her that they couldn't  
 11 arrest me for that because we were married, and I was  
 12 arrested for driving while suspended. That's one  
 13 incidence, amongst the many.  
 14 Q. What were the other incidents?  
 15 A. She's called the cops and told her (sic) that I  
 16 was being abusive towards her in the past. She has made  
 17 false reports on my brother, George, which I don't know  
 18 what the nature of those were, but they were found to be  
 19 a bunch of crap. Anytime I got into a vehicle and drove  
 20 off, she turned me in for it. Even if I wasn't driving,  
 21 she would turn me in for it. Just stuff like that.  
 22 Q. But those -- those weren't false, though, were  
 23 they?  
 24 A. Sometimes they were. Sometimes they weren't.  
 25 Q. You described to Ms. Evans a shank that was found

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1 under your pillow at the Whitman County Jail.  
 2 A. Yep.  
 3 Q. Do you remember that testimony?  
 4 A. Yep.  
 5 Q. Would you please gesture for me how long the  
 6 shank was?  
 7 A. About that long (indicating).  
 8 Q. Is that about a foot?  
 9 A. Yeah, eight inches to a foot. Maybe a little  
 10 more. I don't know. About eight inches, yeah.  
 11 Q. What was the shank made of?  
 12 A. It was made out of some really heavy wire. It  
 13 was almost like coat hanger wire, but a lot stronger,  
 14 and it had a pointed end on it.  
 15 Q. Had you seen it before?  
 16 A. Nope.  
 17 Q. Do you know who made it?  
 18 A. Nope.  
 19 Q. Do you know how it got under your pillow?  
 20 A. I made assumptions that Brian Shepard put it  
 21 there, or James Shepard.  
 22 Q. Well, which is it, Brian or James?  
 23 A. For some reason, we always referred to him as  
 24 Brian Shepard back in -- when we were in jail, but his  
 25 name is James Shepard. So, James Shepard.

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1 Q. How did you -- how did you find out his name was  
 2 James?  
 3 A. What's that?  
 4 Q. How did you find out his name is James?  
 5 A. A newspaper article about him. That's his name.  
 6 It's in all the reports that that's his name, so...  
 7 Q. What newspaper?  
 8 A. The newspaper article that was put out about this  
 9 alleged confession I made to him.  
 10 Q. When did you read that?  
 11 A. I think it was while I was still -- no, it was  
 12 either while I was still in Whitman County Jail or right  
 13 after I got out. I know it was right around that time.  
 14 Q. Which -- which time in the Whitman County Jail  
 15 was that?  
 16 A. When I was in there for evading police. I was in  
 17 there with Shepard.  
 18 Q. Do you remember what year that was?  
 19 A. I believe it was 2002.  
 20 Q. Now, sir, I believe you described -- and correct  
 21 me if I'm wrong. I believe you described an incident  
 22 where you were pushed down on the bed in the Whitman  
 23 County Jail?  
 24 A. Yes.  
 25 Q. The shank poked through the pillow; is that

338

1 right?  
 2 A. It was through a folded blanket.  
 3 Q. I'm sorry?  
 4 A. A folded blanket.  
 5 Q. The shank poked through the folded blanket?  
 6 A. Yep.  
 7 Q. Who was present?  
 8 A. Shepard.  
 9 Q. Who else?  
 10 A. There was a bunch of people in the day room.  
 11 Q. Who was in the cell?  
 12 A. I was the only one in the cell. I walked into  
 13 the cell, and Shepard came in and pushed -- when I was  
 14 going to sit down, he pushed me down on it.  
 15 Q. Shank goes through the blanket, right?  
 16 A. Yeah.  
 17 Q. And what happened next?  
 18 A. It poked me.  
 19 Q. Did you draw blood?  
 20 A. No.  
 21 Q. What did you do next?  
 22 A. I pulled the blanket off to see what was under  
 23 it, and the shank fell out. I picked it up, took it out  
 24 to Captain Ingalls and set it -- threw it on the floor  
 25 in front of him. It was kind of like a dropping motion,

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1 you know, look what the hell I just found in my cell.  
 2 Somebody planted this in my cell. And they moved me out  
 3 of there almost immediately.  
 4 Q. Where did they move you?  
 5 A. They put me down in the Green Unit, the intake  
 6 unit.  
 7 Q. How long did you stay there?  
 8 A. The remainder of my sentence.  
 9 Q. Is that a segregation unit?  
 10 A. It's not a -- it's an intake unit, but that's  
 11 where they put me.  
 12 Q. Did you tell James Shepard that you had an  
 13 apology letter from the Latah County Sheriff's Office?  
 14 A. James Shepard was going through my paperwork one  
 15 day when I was out of my cell, reading my materials that  
 16 I had.  
 17 Q. And did he find -- did he find --  
 18 A. Yeah, he read it.  
 19 Q. Where --  
 20 A. I had an apology letter from Don King saying that  
 21 I would never be associated with this murder again. I  
 22 would not be questioned anymore, and my name would not  
 23 be brought up in it again.  
 24 Q. When did you get that letter?  
 25 A. I got it while I was in the Whitman County Jail,

340

1 I believe.

2 Q. And it was -- was it signed by Don King?

3 A. Yeah.

4 Q. Did you talk to James Shepard about the letter?

5 A. After people's gone through my paperwork and read  
6 stuff, yeah.

7 Q. Did you tell James Shepard that you did not like  
8 Jesse Linderman?

9 A. I don't remember ever having an opinion  
10 towards -- telling anybody my opinion towards Jesse  
11 Linderman.

12 Q. Is that a no?

13 A. Probably could have said I didn't like him,  
14 but -- I could have.

15 Q. Did you tell James Shepard that you didn't like  
16 Tonya Hart?

17 A. No.

18 Q. Did you brag to James Shepard that you had gotten  
19 away about the murder of Tonya Hart?

20 A. No. Never once have I ever implied myself having  
21 any involvement in this murder.

22 Q. When you were talking to James Shepard about the  
23 apology letter from Don King, did you laugh about it?

24 A. Damn right I did.

25 Q. Did you tell him, they'll never catch me?

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1 A. No. The statement that I made referring to them,  
2 they'll never catch me, was when we were talking about  
3 my evading charges, and I told them, they'll never catch  
4 me in a car.

5 Q. Did you tell James Shepard that you had been at  
6 Tonya Hart's place the night of the murder?

7 A. No.

8 Q. Did you tell James Shepard that you were at Tonya  
9 Hart's place on the night of the murder in order to  
10 steal her drugs?

11 A. No.

12 Q. Did you tell James Shepard that Tonya and Jesse  
13 had ripped you off?

14 A. No.

15 Q. Now, I believe you testified in response to one  
16 of Ms. Evans' questions that James Shepard asked you  
17 about the Tonya Hart murder on almost a daily basis.

18 A. Yeah, a lot of people did. I mean, ever since I  
19 took the polygraphs in that jail, it was pretty -- a  
20 daily basis people were asking me about it. Who are you  
21 ratting off? I ain't ratting nobody off. They're  
22 asking me about a murder I don't know shit about, you  
23 know, I mean.

24 Q. How many times total did James Shepard ask you  
25 about the Tonya Hart murder?

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1 A. Your guess is as good as mine.

2 Q. A dozen?

3 A. Several times.

4 Q. More than a dozen?

5 A. I'm pretty sure it was.

6 Q. More than two dozen?

7 A. Your guess is as good as mine.

8 Q. You have no memory of that?

9 A. I have memory of him asking me several, several  
10 times about this murder, about this case, and pretty  
11 much everybody in the jail asking me about it.

12 Q. Did James Shepard ask you about the Tonya Hart  
13 murder more or less than the other inmates?

14 A. More.

15 Q. Was -- did -- was there any inmate in the Whitman  
16 County Jail that asked you about the Tonya Hart murder  
17 more than James Shepard?

18 A. I don't think so. He was pretty persistent on  
19 asking me questions about it and wanting to know things  
20 about the murder. At that time, I didn't really know  
21 nothing about it.

22 Q. What did he ask you?

23 A. He asked me several times if I had anything to do  
24 with it. He asked -- he asked me about drug involvement  
25 in Moscow. Do you know where to get dope in Moscow? I

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1 mean, just all kinds of crap. I seen where he was going  
2 with what he was asking me. I didn't like it. You  
3 know, I mean, people get locked up. They want to get  
4 out. You know, they're going to make shit up.

5 Q. Where was he going?

6 A. I pretty much guessed that he was going to try to  
7 make something up and try to get out of his sentence.  
8 Not too many people in that jail liked him. Everybody  
9 thought he was a frickin' snake.

10 Q. Did other -- did other inmates overhear James  
11 Shepard asking you questions about the Tonya Hart  
12 murder?

13 A. I'm sure they did.

14 Q. They were present?

15 A. I'm sure they were around.

16 Q. These -- these conversations occurred in the day  
17 room?

18 A. Day room, in the cell, wherever.

19 Q. Over what period of time did James Shepard ask  
20 you questions about the Tonya Hart murder?

21 A. During the times that I was incarcerated with  
22 him.

23 Q. The whole time?

24 A. Pretty much from the -- like I said, from the  
25 time I look the polygraphs on, I was being questioned



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1 about this by everybody. Mainly him.

2 Q. Now, I believe you testified in response to one  
3 of Ms. Evans' questions that you can't stand James  
4 Shepard. Do I have that right, sir?

5 A. Yeah, I don't like him.

6 Q. Those are your words, not mine, right --

7 A. That's right.

8 Q. -- you can't stand --

9 A. I can't stand him.

10 Q. Can't stand him, right?

11 A. Don't like him. Don't want nothing to do with  
12 him.

13 Q. Why not?

14 A. For obvious reasons.

15 Q. What -- what are those reasons?

16 A. He's implying that I said something that I didn't  
17 say.

18 Q. When did that feeling of I can't stand him start?

19 A. When I read it in the newspaper, it escalated,  
20 but I've always not liked him. I always thought he was  
21 a shallow, creepy dude.

22 Q. Even when you were cell mates with him?

23 A. Yeah. And I made it clear to him I didn't like  
24 had.

25 Q. What did you tell him?

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1 A. Told him to stay away from me, don't talk to me.

2 Q. Did you tell him anything else?

3 A. Nope.

4 MR. WHITNEY: Your Honor, may the witness be  
5 shown Defendant's Exhibit B?

6 BY MR. WHITNEY:

7 Q. Sir, I want you to take a look at that exhibit,  
8 take all the time you want. And then I'm going to ask  
9 you if you recognize it.

10 A. (Witness (Witness complies.)) yeah, that's a  
11 statement I wrote.

12 Q. That's -- that's your handwriting on that piece  
13 of paper, sir?

14 A. Yep.

15 Q. And at the bottom, that's your signature?

16 A. Yep.

17 Q. And you see in the middle of the page, it says,  
18 date, time, place of statement? Do you see that line,  
19 sir?

20 A. Yep.

21 Q. 12/13/01, that's accurate, isn't it?

22 A. I believe so.

23 Q. And 13:15, that's 1:15 in the afternoon; is that  
24 right, sir?

25 A. I believe so. I don't remember what time I went

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1 in and made the statement.

2 Q. But it was daytime, wasn't it?

3 A. Pretty sure it was.

4 Q. And Latah Sheriff's Office, that's where you  
5 wrote this out, right?

6 A. I'm pretty sure.

7 MR. WHITNEY: You're Honor, I'd move  
8 admission of Defendant's B.

9 THE COURT: Any objection?

10 MS. EVANS: No, Your Honor.

11 THE COURT: Based on that, what's been  
12 marked for identification purposes as Defendant's  
13 Exhibit B is hereby admitted.

14 EXHIBITS:

15 (Defendant's Exhibit B received into  
16 evidence.)

17 BY MR. WHITNEY:

18 Q. Now, sir, you made this statement less than two  
19 days after Tonya Hart's murder, correct?

20 A. According to this, yeah.

21 Q. Now, sir, keep that with you. I'm going to come  
22 back to that statement in just a moment. But you  
23 clearly -- from your testimony, you clearly remembered  
24 waking up at Joy's apartment the morning after Tonya  
25 Hart was murdered, right?

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1 A. Yeah.

2 Q. You remember that because Forrest Barnes came  
3 over and gave the news, right?

4 A. Yep.

5 Q. Now, I want to ask you where you woke up the day  
6 prior?

7 A. The day prior?

8 Q. Yes, sir.

9 A. The night I was at Sarah Foo's house? The night  
10 I didn't sleep all night? The night we were up smoking  
11 meth and drinking and smoking pot? How do you want me  
12 to answer that? I was already awake.

13 Q. So --

14 A. I was at Sarah Foo's until daylight the day prior  
15 to Tonya being shot.

16 Q. So, if Tonya Hart was murdered on December 11,  
17 2001, that day, at daybreak, you were at Sarah Dalbec's  
18 apartment, right?

19 A. Yeah.

20 Q. And you had been up all night?

21 A. Yeah.

22 Q. At daybreak that day, was anyone with you besides  
23 Sarah Dalbec?

24 A. I think before I went to get my car, some girl  
25 came over, and I was trying to get a ride to my car so I

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1 wouldn't have to walk down to the tattoo shop. Told her  
 2 I'd give her some pot when we got there if she gave me a  
 3 ride. I believe I ended walking down to get my car.  
 4 She wouldn't give me a ride.  
 5 Q. Do you remember the girl's name?  
 6 A. No.  
 7 Q. Any description you can give of her, sir?  
 8 A. No.  
 9 Q. Was she white?  
 10 A. Just a local bag whore.  
 11 Q. A local what?  
 12 A. A local bag whore.  
 13 Q. I'm sorry, sir. I can't hear that last word.  
 14 A. A local bag whore.  
 15 Q. Bag whore?  
 16 A. Yeah.  
 17 Q. And what's a bag whore?  
 18 A. Somebody that will come over and pretty much suck  
 19 you off for a hit of dope.  
 20 Q. When you say "dope," do you mean marijuana?  
 21 A. Meth.  
 22 Q. Okay. But you didn't have meth to give her,  
 23 right?  
 24 A. It was all gone. We smoked it all night long.  
 25 Q. You had Jeremy White's marijuana?

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1 A. Sarah had Jeremy White's marijuana. I had the  
 2 other half of Jeremy White's marijuana in my car.  
 3 Q. But you said a minute ago -- correct me if I'm  
 4 wrong. I thought you said you'd swapped the girl  
 5 marijuana in order to take you to your car; is that  
 6 right?  
 7 A. I said if she took me to my car, that I'd give  
 8 her some, because I had some in my car.  
 9 Q. And that was Jeremy White's?  
 10 A. The weed that was in my car, yeah, half of what  
 11 was left that I took from him.  
 12 Q. Did she take you to your car?  
 13 A. No, I walked.  
 14 Q. You never gave her any marijuana?  
 15 A. No.  
 16 Q. Why didn't -- why didn't you let her take you?  
 17 A. She wouldn't give me a ride.  
 18 Q. Okay. Now, sir, just to confirm, at that time,  
 19 you did not have an apartment of your own, correct?  
 20 A. No. I was -- when I -- when my girlfriend wasn't  
 21 kicking me out of her parents' house in Troy, I was  
 22 bumming around on couches.  
 23 Q. And how long had it been since you had your own  
 24 place?  
 25 A. Well, at least a few years. I mean, I lived

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1 out -- me and Jessica lived with her parents for almost  
 2 five years.  
 3 Q. Daybreak, you're at Sarah Dalbec's. What did you  
 4 do for the morning of that day?  
 5 A. Went and got my car. I went over to Joy's house  
 6 sometime that morning, and that's when Shalako and Rick  
 7 were there.  
 8 Q. Did you do anything there?  
 9 A. Yeah. We bullshitted for a while. Shalako had  
 10 made me a bet that he could choke me out within three  
 11 seconds, and I subsequently lost the bet.  
 12 Q. What did you have to give him?  
 13 A. Nothing. It was just bragging rights pretty  
 14 much.  
 15 Q. Did you eat anything that morning?  
 16 A. I don't remember.  
 17 Q. How long did you stay at Joy and Shalako's  
 18 apartment?  
 19 A. I was there for a little while.  
 20 Q. Past noon?  
 21 A. Could have been.  
 22 Q. Did you ever eat lunch that day?  
 23 A. I don't know.  
 24 Q. When did you leave Joy and Shalako's apartment?  
 25 A. I don't know. I know it was sometime early

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1 afternoon, late morning. I don't know.  
 2 Q. At some point, though, Shalako choked you out?  
 3 A. Yeah.  
 4 Q. And -- and you became unconscious?  
 5 A. Yeah.  
 6 Q. Do you know how long you were unconscious?  
 7 A. I thought it was a quite a while, but they said  
 8 it was like maybe 30 seconds.  
 9 Q. How long after that event, sir, did you leave the  
 10 apartment, if you did?  
 11 A. A little while after.  
 12 Q. Do you know where you went?  
 13 A. I went to Troy.  
 14 Q. How long did you spend in Troy?  
 15 A. I was there for a little while. I know I made it  
 16 back into town before dark.  
 17 Q. Who were you with in Troy?  
 18 A. I went out there to see Jessica Elliott and my  
 19 kids.  
 20 Q. Which kids, sir?  
 21 A. Jasmine.  
 22 Q. Any others?  
 23 A. Huh?  
 24 Q. Just the one child?  
 25 A. Yeah. Well, I think Allison was a baby then, I'm

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1 sure. I think she was.

2 Q. When you drove back from Troy before dark, where  
3 did you go?

4 A. I went to Joy's house.

5 Q. Directly from Troy?

6 A. Yeah.

7 Q. Did you leave Joy's house before you went to get  
8 the beer?

9 A. Excuse me?

10 Q. Did you leave -- did you leave Joy's apartment  
11 prior to the time you later went to buy the beer?

12 A. When I went and got beer later on that night, was  
13 I at Joy's and left from there? Yeah.

14 Q. Let me ask the question a different way. I'm  
15 sorry. You drove back from Troy?

16 A. Yeah.

17 Q. You went to Joy and Shalako's apartment, right?

18 A. Yeah.

19 Q. Once you got there, did you leave?

20 A. I might have, but I don't think I did. I mean,  
21 from what I remember, I thought I was there the whole  
22 time until it came up to the point to where I asked if I  
23 could stay the night, and I was told I couldn't stay the  
24 night.

25 And I think I like pretty much begged and pleaded

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1 with them to let me stay the night because there was two  
2 feet of snow on the ground, you know. And Joy said I  
3 couldn't stay the night, and so I went out in my car.

4 Q. Do you remember what time it was when you went  
5 out to your car?

6 A. No.

7 Q. But it was after dark, right?

8 A. Yeah.

9 Q. Because you got there right before dark, right?

10 A. It was probably 6:30, 7:00.

11 Q. When you went out to the car?

12 A. Yeah.

13 Q. Do you have an estimate of the time when you  
14 arrived?

15 A. It was right around dark, right before dark.

16 Q. Do you know the time of day that was?

17 A. No.

18 Q. Did you eat dinner with Joy and Shalako?

19 A. I don't remember if I ate anything at all that  
20 day.

21 Q. Now, I want to talk about your drug use, because  
22 you've already testified that the prior night you had  
23 stayed up all night using methamphetamine, right?

24 A. Yep.

25 Q. And marijuana?

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1 A. Yep.

2 Q. And you drank some beer?

3 A. Yep.

4 Q. But from daybreak on, you didn't consume any  
5 drugs while you were with your children, right?

6 A. No.

7 Q. You didn't smoke any marijuana, correct?

8 A. I don't think I did.

9 Q. But you wouldn't do that around your children,  
10 would you?

11 A. I've smoked pot around my kids and drank around  
12 them.

13 Q. But when you went out to see -- went out to Troy  
14 to see Jessica and your two kids, you weren't allowed to  
15 smoke marijuana out there, were you?

16 A. At Joy's house. I don't do nothing at Joy's  
17 house. She doesn't allow that at her house.

18 Q. But I'm asking about --

19 A. I was in Betsy's house in Troy where my kids  
20 were. Half the time, alls we did was party out there.

21 Q. So, on --

22 A. All of us in that house when I lived there were  
23 using methamphetamines, drugs. Me alcohol more than  
24 them because they didn't drink. They were more into the  
25 speed.

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1 Q. So, on December 11th, 2001, when you went out to  
2 Troy to visit your children, did you smoke any  
3 marijuana?

4 A. When I was in Troy, I could have, might have.

5 Q. Did you?

6 A. I don't know. Might have.

7 Q. Did you ingest any methamphetamine?

8 A. No.

9 Q. Did you drink any alcohol?

10 A. Yeah. I always drank on a daily basis. Still  
11 do.

12 Q. So, when you drove -- well, let me ask you one  
13 more question then. Do you remember how much you drank?

14 A. Well, it wasn't much. Didn't have much money.  
15 Couldn't have been more than two or three 24-ounce cans.  
16 I mean, couldn't have been much at all.

17 Q. Did you drink with Jessica?

18 A. No. Jessica didn't drink.

19 Q. Was anyone else present while you were drinking  
20 this beer?

21 A. Probably. I mean, I don't know. Ask anybody in  
22 this town. Whenever they see me, I've got a beer in my  
23 hand. I mean, go figure.

24 Q. Once you arrived back to Joy's on December 11th,  
25 2001, Joy and Shalako's apartment, there, you did not

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1 drink beer inside of the apartment, correct?

2 A. I'm pretty sure I didn't because Joy does not  
3 like me being around her if I'm drinking, and she won't  
4 allow me to drink in her place.

5 Q. And she won't even allow you to be drunk in her  
6 place, right?

7 A. There's times she lets me in there if I'm  
8 maintaining myself and not stumbling over stuff, if I'm  
9 not acting like a fool. I mean, if I'm fairly  
10 maintained, she'll let me in.

11 Q. On December 11, 2001, when you arrived back at  
12 Joy and Shalako's apartment before dark, you weren't  
13 drunk, were you?

14 A. No.

15 Q. And --

16 A. I might have had a little buzz, but not drunk.

17 Q. All right. Once you came inside the apartment of  
18 Joy and Shalako, you didn't smoke methamphetamine?

19 A. No. Never.

20 Q. You did not smoke marijuana?

21 A. No. Never.

22 Q. Did you at any time later that night leave the  
23 apartment to go get high?

24 A. No.

25 Q. Do you have any specific recollection of leaving

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1 the apartment that night besides the event to go buy  
2 beer that you've already described?

3 A. No, I don't. I don't -- I didn't think I left at  
4 all. I mean, I thought the only time I left was to go  
5 out to my car and go to sleep. And I think that --  
6 yeah. I then left later on to get -- go get beer, and  
7 that was it.

8 Q. Now, sir, Defendant's B, you've still got that in  
9 front of you, right?

10 A. Yep.

11 Q. That's your statement?

12 A. Yep.

13 Q. Now, when you wrote that, I believe you testified  
14 to Ms. Evans that that was an attempt by you to be  
15 helpful?

16 A. Yeah.

17 Q. And when you wrote that, you were aware of the  
18 consequences that come to snitches in jail?

19 A. A white girl got shot, a girl that didn't deserve  
20 to die. If I can do anything to help police to bring  
21 that person in, yeah.

22 Q. And so --

23 A. If I knew somebody killed her, I'd go tell the  
24 police.

25 Q. So, you were -- you were trying your best to help

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1 them, right?

2 A. I wasn't trying my best to help them. I thought  
3 I knew something that might be helpful to them, so I  
4 went and told them, just like anybody in this town might  
5 have done. Just like -- I'm sure you've read the  
6 discovery packets. Just like anybody made their own  
7 assumptions of what could have happened.

8 Q. So, you didn't go there to lie?

9 A. No.

10 Q. All right. Now, let's -- let's take a look at  
11 the first -- first part of this. I saw a black  
12 four-door mid-nineties Nissan or Toyota on Polk Street  
13 on the night Tonya was shot. That's -- that's true,  
14 right?

15 A. I don't know if it was the night that Tonya was  
16 shot. I'm positive it wasn't the night that Tonya was  
17 shot. It wasn't that night. Sitting there thinking of  
18 everything that went on then and knowing where I was, I  
19 had my days mixed up on what night I was out there and  
20 seen that car.

21 Q. But, sir, this was only 36 hours after the  
22 occurrence of the murder?

23 A. So. What's your point?

24 Q. You were mixed up --

25 A. It could have been the night -- it could have

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1 been the night that I went out and threw the briefcase  
2 out on Polk Extension. Could have been the day before  
3 that.

4 Q. So, your testimony --

5 A. This is not accurate to what -- I wrote this,  
6 yeah, but it was not the night that Tonya Hart got shot  
7 that I was on that road.

8 Q. So, sir, your testimony is that your memory is  
9 more accurate today, nine years after the event, than it  
10 was a day-and-a-half after the event?

11 A. I've had a lot of time to sit and think about  
12 this, yeah.

13 Q. The next sentence, sir, I never seen this car on  
14 this property before.

15 A. Exactly.

16 Q. That's what you wrote?

17 A. Yeah.

18 Q. That was true, wasn't it?

19 A. Yeah.

20 Q. Which property is it?

21 A. The one right next to the Dalbec's place.

22 Q. What's the address?

23 A. I don't know the address. If you want to bring  
24 the map back up here, I'll be more than happy to point  
25 it out to you again.

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1 Q. You've got the map right there next to you. Go  
 2 ahead and pull that out.  
 3 A. (Witness (Witness complies.).)  
 4 Q. Can you find it?  
 5 A. Yeah. Give me a second.  
 6 Q. Take your time.  
 7 A. Right here (indicating).  
 8 MR. WHITNEY: Your Honor, may I approach?  
 9 THE COURT: Sure.  
 10 THE WITNESS: It's right in this area right  
 11 here (indicating).  
 12 BY MR. WHITNEY:  
 13 Q. Well, you've got something circled that says --  
 14 A. I believe that's the exact spot, but it's in this  
 15 area right here. I believe that's the Dalbec's place,  
 16 and I believe that that's where the little shed is,  
 17 because it's right on the road, not more than ten feet  
 18 off the road (indicating throughout).  
 19 Q. Okay. Why don't you draw an arrow there. You've  
 20 got the marker. Draw an arrow and have the arrow point  
 21 to that.  
 22 A. (Witness (Witness complies.).)  
 23 Q. And then label it "the property."  
 24 A. (Witness (Witness complies.).)  
 25 Q. And then put -- let me look at B here, 12/13/01.

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1 A. I don't know if that was the day, so I'm not  
 2 writing that on there that I seen it.  
 3 Q. Okay. Put Exhibit B on there.  
 4 A. (Witness (Witness complies.).)  
 5 Q. All right. Thank you, sir. You can set that  
 6 aside. You've still got the pen, right? How many times  
 7 before had you been past that property?  
 8 A. Hundreds.  
 9 Q. Next, you've still got Defendant's Exhibit B in  
 10 front of you, sir?  
 11 A. Yep.  
 12 Q. I know the people who go there to feed the  
 13 animals. Did I read that correctly, sir?  
 14 A. Yeah.  
 15 Q. Which animals?  
 16 A. I think he had a cow there.  
 17 Q. Well, it says animals. That's plural, right?  
 18 A. Well, I know at one point he had a couple there.  
 19 At one point he had one there.  
 20 Q. Was there a residence on that property?  
 21 A. I think it was just that building there.  
 22 Q. Was that building meant for housing cows?  
 23 A. I'm pretty sure. I mean, would somebody stick a  
 24 cow out in the middle of nowhere without shelter if it  
 25 rains or something?

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1 Q. What were the names of the people who went there  
 2 to feed the animals?  
 3 A. I don't know their names. I know of them. I  
 4 should have said I know of them, not I -- I don't  
 5 personally know them.  
 6 Q. How did you know them?  
 7 A. Just from seeing him there every day.  
 8 Q. You ever talk to him?  
 9 A. I know he had a nickname. They called him Beebs  
 10 (phonetic).  
 11 Q. Beebs?  
 12 A. Beebs.  
 13 Q. Next sentence, you wrote -- you wrote -- I've got  
 14 one more thing before we move on. That -- that sentence  
 15 that we just went over about the feeding of the animals,  
 16 that sentence was true, right?  
 17 A. Yeah. What else would he go there for? I  
 18 mean...  
 19 Q. Next sentence, the car had Washington plates and  
 20 about an eight-inch wide chrome stripe running down the  
 21 side of the car. Did I read that correctly, sir?  
 22 A. Yep.  
 23 Q. That sentence was true, right?  
 24 A. The car I seen out there, yeah.  
 25 Q. Yeah. It's true today just as it was when you

363

1 wrote the statement, right?  
 2 A. Yep.  
 3 Q. Isn't it?  
 4 A. Yeah.  
 5 Q. Which side of the car was the stripe on?  
 6 A. I'm assuming it would be on both sides. I mean,  
 7 it was a pretty nice car. But when I was coming back  
 8 down was when I really noticed that it was on the  
 9 driver's side.  
 10 Q. Well, you're -- you've got knowledge of working  
 11 on cars, sir, right?  
 12 A. Yeah.  
 13 Q. You know stuff about cars?  
 14 A. Yep.  
 15 Q. What model was it?  
 16 A. I -- I just knew it to be a Nissan.  
 17 Q. Did you see the name plate?  
 18 A. No, but I'm familiar -- if you put a picture of a  
 19 car in front of me, I can tell you what kind of car it  
 20 is.  
 21 Q. Do you know the difference, say, between a Maxima  
 22 and an Altima?  
 23 A. There's really not much of a difference. There's  
 24 little minor details in the body styles.  
 25 Q. Was there anything more about the mid-nineties

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1 black Nissan four-door that you recall?

2 A. It had some rims on it, decent rims on it. It  
3 had a chrome stripe down the side, had Washington  
4 plates.

5 Q. When you same "chrome," do you mean like chrome,  
6 the metal, or chrome paint or what?

7 A. On the body going down the side of the car?

8 Q. Yeah, the eight-inch one.

9 A. From my experience doing body work, you just --  
10 it's a two-sided tape process. You take these chrome  
11 plates, and you stick them on the side of a car.

12 They're not bolted on or nothing. They're just some  
13 after-market accessory you can put on any car.

14 Q. The next sentence in your statement, sir, the  
15 first time I went by was about or around 10:00. Did I  
16 read that right, sir?

17 A. That's what it says.

18 Q. And that -- that would be 10:00 in the evening,  
19 right?

20 A. I'm assuming so.

21 Q. Well, it would be dark then, right?

22 A. It was dark out.

23 Q. Dark?

24 A. Yep.

25 Q. Yeah. And you only had one headlight on your

365

1 car?

2 A. Excuse me?

3 Q. You only had one headlight on your car?

4 A. When I'm out on back roads, I run with my high  
5 beams on so both headlights work.

6 Q. So, it was only the -- the driving beam that was  
7 out on your Subaru then?

8 A. It was the low beam that was out. If you drive  
9 in town with your high beams on, the cops are going to  
10 pull you over. On the back roads, if I'm running around  
11 with my headlights burnt up or something -- even if my  
12 tail lights are out, I'll ride with my foot on the brake  
13 so it looks like I have tail lights. My high -- if one  
14 of my headlights are out, I'll run with my high beams on  
15 so it looks like my headlights work if I'm out on the  
16 back road. And if I have to drive in town, I'll  
17 probably run with my high beams on, but ride the side  
18 roads so I ain't blinding anybody.

19 Q. That sentence, the first time I went by was about  
20 or around 10:00, that's true, correct?

21 A. I think so, but the days are wrong on when this  
22 actually took place.

23 Q. All right. Next sentence, I drove by again to  
24 take the back roads to Potlatch at about 10:45, and the  
25 car was gone. Did I read that correctly, sir?

366

1 A. Yeah.

2 Q. That statement was true, right?

3 A. That's what I wrote. But if you go out Polk  
4 Extension and try to get to Potlatch from Polk

5 Extension, good luck trying. There's no road that goes  
6 through it. You've got to get on the highway, go to  
7 Viola, take Viola the rest of the way in through  
8 Flannigan Creek.

9 Q. That's possible, right? That's a route?

10 A. If you get on the highway.

11 Q. If you go to -- if you're trying to avoid  
12 interaction with police officers, you can drive out  
13 North Polk --

14 A. Wouldn't get on the -- I wouldn't get on the  
15 Potlatch highway, that's for sure. They're always on  
16 that highway.

17 Q. So, sir, was this -- was this last sentence, was  
18 that true or was it false when you wrote it?

19 A. I think it was true. I mean, it was true; but  
20 the day that this actually happened, I don't think is  
21 accurate.

22 Q. Okay. But --

23 A. I think I was confused on the days that I was  
24 driving out there. And I'm positive that it wasn't that  
25 night that I wrote on here.

367

1 Q. Every fact in Exhibit B is true except you claim  
2 now that the date is wrong; is that correct, sir?

3 A. Even way back then, after making this statement,  
4 I've told police that I think that I made a mistake on  
5 what night I was riding out there.

6 Q. I'm just trying to understand your testimony  
7 today. And it's -- your testimony is, every single fact  
8 on your written statement is true except the date of  
9 your driving?

10 A. Yep.

11 Q. All right. I'm done with that for the moment,  
12 sir, but you can hang on to it in case we need to come  
13 back to it.

14 Now, sir, when you drove past that black Nissan  
15 at about 10:00 in the evening, regardless of the day,  
16 where were you headed?

17 A. I think I was just out on the back roads drinking  
18 around, drinking and driving around.

19 Q. Was anyone with you?

20 A. No. It was a common thing with me. You know, if  
21 I had nothing to do, I'd get a couple beers and I'd  
22 drive around on the back roads.

23 Q. Was it snowing?

24 A. I think it was. There was snow out on the  
25 gravel, but the streets were plowed, I'm sure. I don't

368

1 remember.

2 Q. You don't remember whether snow was falling?

3 A. I don't think there was any snow on the ground.

4 Q. Sir, where you saw the black Nissan, was there a  
5 light besides your headlights, like a street light or  
6 outdoor light of any kind?

7 A. What do you mean?

8 Q. Was it -- was the property by which the Nissan  
9 was parked, did that property have some kind of  
10 illumination?

11 A. There was a light on the building.

12 Q. Did it -- did the light on the building reach the  
13 Nissan?

14 A. Oh, yeah.

15 Q. Did it help you see it?

16 A. I could see -- the driveway's only about ten feet  
17 long, long enough for a car to pull in and be off the  
18 road. I mean, the light outside the front -- from the  
19 side of the building, it's going to shine out to the  
20 road.

21 Q. So, that -- that light helped you make out  
22 details on the Nissan?

23 A. Not necessarily details, but enough to know what  
24 kind of car it was.

25 Q. So, in other words, you didn't depend on just

369

1 your headlights?

2 A. What's that?

3 Q. You did not depend on just your headlights to  
4 view the Nissan?

5 A. No.

6 Q. Now, sir, you indicate that you never saw the car  
7 on that property before, the black Nissan?

8 A. Yep.

9 Q. Had you ever seen that car anywhere?

10 A. Nope.

11 Q. Have you seen it since?

12 A. Nope.

13 Q. Now, sir, when you drove by again at 10:45,  
14 regardless of which day it occurred on, where were you  
15 coming from?

16 A. I was coming back in off North Polk, going back  
17 into town.

18 Q. Were you headed anyplace in particular?

19 A. I don't remember where I was headed.

20 Q. Was there anyone with you at that time?

21 A. Nope.

22 Q. Were you looking for the black Nissan?

23 A. Nope.

24 Q. Why did you notice that it was gone?

25 A. The whole time I lived out at Jerry Thompson's

370

1 place, I have never, ever seen a car other than the  
2 Nissan truck that the guy drove to feed his animals  
3 parked there. Never once. I've been up that road four  
4 or five times a day, hundreds of times, and never have  
5 seen anybody parked there.

6 Q. When you drove on North Polk at 10:45 the night  
7 that you saw the black Nissan, did you see footprints on  
8 the side of the road?

9 A. How would I see footprints on the side of the  
10 road?

11 Q. From your headlights.

12 A. No.

13 Q. Did you see any police vehicles?

14 A. No.

15 Q. Sir, the night that you saw the black Nissan, do  
16 you remember where you slept that night?

17 A. No.

18 Q. Do you remember how close in time to Tonya Hart's  
19 murder was the night that you saw the black Nissan?

20 A. It believe it was within -- I think it was the  
21 night before that I took the pot from Jeremy Fro's  
22 house, or the night of that. But I'm pretty sure it  
23 couldn't have been the night that I took it from -- the  
24 pot from Jeremy Fro's house because I was at Sarah's all  
25 night. So, it had to have been the day before when I

371

1 actually seen it.

2 Q. I'm sorry, sir. I'm not -- I'm not  
3 understanding.

4 A. I'm assuming the day that I seen the black Nissan  
5 was the day before I went into Jeremy Fro's house and  
6 stole his pot.

7 Q. All right. Now, let me switch you to  
8 December 12th, 2001, the day after Tonya Hart was  
9 murdered. That's the morning you woke up at Joy and  
10 Shalako's apartment, right?

11 A. Yeah.

12 Q. You remember Forrest Barnes came over --

13 A. Yeah.

14 Q. -- right? Now, that day, do you remember how you  
15 spent the morning?

16 A. Well, besides Forrest coming over crying and  
17 wanting a ride to Robin's house, I was at Joy's for a  
18 while. And I believe I went out to Troy, went over to  
19 Syringa to find out what was going on. That's pretty  
20 much it.

21 Q. Went to Troy, saw your kids?

22 A. Pretty much went out there to tell them that some  
23 girl got shot.

24 Q. Tell who?

25 A. Jessica and her parents, tell them what Forrest

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1 Barnes had just told me. I'm pretty sure that's what I  
2 did.  
3 Q. And did you, in fact, see Jessica?  
4 A. Yeah.  
5 Q. And what's Jessica's last name again?  
6 A. Right now it's Banotto (phonetic), but it was  
7 Elliott then.  
8 Q. And did you, in fact, see Jessica's parents on  
9 December 12th, 2001?  
10 A. I'm pretty sure I did.  
11 Q. What -- what are their names?  
12 A. Mike and Elizabeth Elliott.  
13 Q. Did you see anyone else in Troy?  
14 A. Nope.  
15 Q. When you told them that Tonya Hart had been  
16 murdered, were you the first to tell them that?  
17 A. Could have been. I'm pretty sure. It was the  
18 morning after. I mean...  
19 Q. Did they react with shock?  
20 A. They didn't know who she was. I mean, Elizabeth,  
21 she's always sympathetic to somebody that gets hurt or  
22 something, so I'm sure her reaction was like, oh, you  
23 know, felt bad. But I don't think Mike could have cared  
24 less. He didn't know who they were.  
25 Q. So, when you were at Joy's on the morning after

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1 Tonya Hart was murdered, you did not smoke marijuana,  
2 right?  
3 A. I don't think so.  
4 Q. You did not --  
5 A. Not in Joy's place anyway.  
6 Q. You did not ingest methamphetamine, right?  
7 A. Not in Joy's house.  
8 Q. You did not drink alcohol?  
9 A. Not in Joy's house.  
10 Q. When you went to Troy and saw Jessica and her  
11 parents, did you drink alcohol?  
12 A. Possibly.  
13 Q. Did you smoke any marijuana?  
14 A. Possibly.  
15 Q. Did you ingest any methamphetamine?  
16 A. Nope.  
17 Q. Later that day, I believe you said you went to  
18 Syringa?  
19 A. Yeah.  
20 Q. Now --  
21 A. I think I went to Syringa later that day.  
22 Q. Who's at Syringa?  
23 A. Robin Ziegler lives there.  
24 Q. Anyone else that you would go to see?  
25 A. Not really. Maybe Allen Wright.

374

1 Q. So, if you were there, you went there to see  
2 Robin Ziegler?  
3 A. Pretty much.  
4 Q. When you --  
5 A. Her husband, Bo Stipe, was a good friend of mine.  
6 Q. Later in the day on December 12th, 2001, after  
7 you left Troy, did you drink any alcohol?  
8 A. Probably.  
9 Q. Did you smoke any marijuana?  
10 A. Probably.  
11 Q. Did you ingest any methamphetamine?  
12 A. Nope. Meth wasn't a drug of choice. It was  
13 pretty much if it was there, I did it.  
14 Q. Sir, do you remember going anywhere else on the  
15 day after Tonya Hart's murder besides Troy and maybe  
16 Syringa?  
17 A. No, but I probably could have went somewhere  
18 else.  
19 Q. Where did you spend the night of December 12th?  
20 A. Either one of two places. In Troy or in Syringa,  
21 because if Joy didn't let me stay at her place, I'd  
22 usually go ask Robin if I could stay at her place. And  
23 if that didn't happen, then I'd, you know, kiss my ex's  
24 ass so she'd let me sleep at her place.  
25 Q. Your ex?

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1 A. Jessica.  
2 Q. All right. Did you watch any TV on the day after  
3 Tonya Hart's murder?  
4 A. Yeah.  
5 Q. Where did you watch TV?  
6 A. I believe it was either out in Troy or -- I don't  
7 remember where it was at, but I remember seeing  
8 something on the news about Tonya getting shot and if  
9 anybody had any information that they think could be  
10 helpful, to contact the Latah County Sheriff's.  
11 Q. The next day, sir, December 13th, do you remember  
12 where you woke up?  
13 A. No.  
14 Q. Do you remember who you were with on the morning  
15 of December 13th?  
16 A. No, I don't.  
17 Q. Sir, do you remember anything at all about the  
18 morning of December 13th, 2001?  
19 A. Not really. I mean, bouncing around from place  
20 to place and just partying.  
21 Q. Well, when you got to the Sheriff's Office at  
22 1:15 on December 13th, were you drunk?  
23 A. Not that I remember.  
24 Q. You wouldn't go to the Sheriff's Office drunk,  
25 right?



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1 A. I might have had a few drinks throughout the day.  
2 I drink constantly.

3 Q. But you were worried about getting in trouble for  
4 driving, right?

5 A. Not really. I mean, it's not like I'm going to  
6 pull into the Sheriff's Office parking lot and go, hey,  
7 here I am. I drove here.

8 Q. But when you went on December 13th, 2001, you  
9 drove you Subaru, right?

10 A. Yeah.

11 Q. And you drove alone?

12 A. Yeah.

13 Q. Do you remember what time you got there?

14 A. No.

15 Q. Do you remember how long you spoke to an officer  
16 before you made your written statement?

17 A. No.

18 Q. Do you remember if you spoke to an officer before  
19 you made a written statement?

20 A. I remember going in and telling them, I think I  
21 may have -- know something that might be helpful. And  
22 they asked me if I'd write a statement. And that's the  
23 statement I apparently wrote.

24 Q. Do you recall whether or not you went inside the  
25 Sheriff's Office to write your statement?

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1 A. Yeah.

2 Q. On the day after the murder, correct?

3 A. Yeah. Pretty sure of that.

4 Q. Why didn't you go to the Sheriff's Office that  
5 day?

6 A. I don't know why I didn't.

7 Q. Was there anything in particular that motivated  
8 you to go on December 13th, 2001?

9 A. I think a lot of people talking and wanting  
10 people to help. You know, I mean, Robin and Jessica,  
11 everybody I knew. I mean, they made comments, if  
12 anybody knows anything, you need to go help, because all  
13 these people knew Tonya. I didn't. I don't know if  
14 Jessica knew Tonya. I'm pretty sure she didn't. But I  
15 know Robin knew her. I know -- I don't know if Joy knew  
16 her or not, but I knew other people that knew her. They  
17 were -- yeah, pretty much, if you knew anything, go say  
18 something, you know. People wanted to help.

19 Q. So --

20 A. And if I thought I knew something that was  
21 helpful, I wanted to help too.

22 Q. So, on December 12th, 2001, the day after Tonya  
23 Hart was shot, Robin Ziegler told you, if you know  
24 something, you should help?

25 A. I don't know if it was her that said that

377

1 A. I think I might have sat in their little lobby  
2 thing they have there and wrote it.

3 Q. Did they give you a clipboard?

4 A. I think so.

5 Q. You later got interrogated by Don King past the  
6 locked door in the Sheriff's Office, right?

7 A. Yeah.

8 Q. You know what I'm talking about? They've got  
9 that locking door right inside the lobby?

10 A. Yep.

11 Q. You've been through that before, right?

12 A. Yep.

13 Q. When you wrote your statement, were you in that  
14 interrogation room?

15 A. I don't remember if I was -- let's see. I think  
16 I was in there -- I remember being questioned at one  
17 point about it inside. When you go in through the door,  
18 there's a room right to the right. I remember at one  
19 point, they asked me some questions in there. I think I  
20 filled the statement out in the lobby. I'm not sure.  
21 It could have been inside of there.

22 Q. You saw the TV on December 12th, 2001, the day  
23 after the murder, right?

24 A. What's that?

25 Q. You saw the TV, the request for information?

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1 directly, but a lot of people implied that if you know  
2 something, go say something.

3 Q. At any time, sir, did you tell anyone that you  
4 made that written statement, Defendant's B?

5 A. Excuse me?

6 Q. At any time, did you tell any person that you  
7 went to the Sheriff's Office and gave this voluntary  
8 statement?

9 A. Yeah.

10 Q. Who did you tell?

11 A. I don't remember who. I've told several people  
12 that I thought I seen a car out on Polk Extension around  
13 the time.

14 Q. Well, that -- that's not what I'm asking. I want  
15 to know if you told people --

16 A. I don't remember who I told. I know I've told  
17 people and spoke about it before, but I don't remember  
18 who.

19 Q. Do you recall if you told your sister, Joy  
20 Thomas?

21 A. I could have.

22 Q. Do you recall if you told Robin Ziegler?

23 A. I could have.

24 Q. Sir, I want to switch your attention to your  
25 physical characteristics in December of 2001. Take a

380

1 look at Exhibit B.

2 A. Yeah.

3 Q. And it indicates that in December of 2001, you  
4 were five feet eight inches tall.

5 A. Still am.

6 Q. That was accurate then?

7 A. Yep.

8 Q. Accurate now, right?

9 A. Yep.

10 Q. It indicates that you were 170 pounds?

11 A. I was not 170 pounds.

12 Q. What were you?

13 A. I weigh 170 now, and I was a lot smaller then.

14 Q. What do you think you weighed in --

15 A. Then?

16 Q. Yes, sir.

17 A. Probably about 145, 150.

18 Q. It says you have brown hair?

19 A. Yep.

20 Q. And you did, didn't you?

21 A. Yep.

22 Q. Now, sir, was your hair shoulder length?

23 A. At one point during that time, yeah, I had longer  
24 hair, but I shaved my head. I don't know exactly dates  
25 or timelines of any of that, so...

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1 Q. But in late December 2001, you did have shoulder  
2 length hair?

3 A. I could have, yeah.

4 Q. And, sir, when your hair gets long, it curls a  
5 little bit in the back, doesn't it?

6 A. Sometimes, yeah, if I don't wash it for days.

7 Q. And that would have been a frequent occurrence  
8 while you didn't have a home, wouldn't it have been?

9 A. Yeah.

10 Q. In December of 2001, right?

11 A. Yep.

12 Q. Sir, in December of 2001, did you have any  
13 tattoos?

14 A. Yeah.

15 Q. How many?

16 A. I had one on my shoulder blade, one on my  
17 shoulder and one on my forearm, I believe (indicating  
18 throughout).

19 Q. Okay. You gestured -- you said one on your  
20 shoulder blade, and that's on the back side, right?

21 A. Yes, my right shoulder blade.

22 Q. Okay.

23 A. I got that when I was 18.

24 Q. That --

25 A. (Indicating).

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1 Q. Okay.

2 A. Right shoulder blade.

3 Q. All right. Now -- and I believe you've got  
4 one -- you indicated in December of 2001, you had --

5 A. I had a dragon on my shoulder I got shortly after  
6 that (indicating).

7 Q. All right. Dragon on -- and is that -- is that  
8 one still there?

9 A. Of course.

10 Q. All right. Now, you had one on your forearm,  
11 right?

12 A. Yeah.

13 Q. And is that one still there?

14 A. Yep. I got that in Spokane.

15 Q. Can you hold it up?

16 A. (Witness (Witness complies).)

17 Q. It's all down your forearm?

18 A. Yep.

19 Q. Was it the same -- has the color changed since  
20 December of 2001?

21 A. Yeah.

22 Q. How has it changed?

23 A. I originally got it some -- I was up at Spokane  
24 partying with a bunch of guys. Some guy claimed he  
25 could do a tattoo. He put this thing on my arm that

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1 looked like a piece of steak. So, in 2004, I had a guy  
2 fix it up and make it look a little better --

3 Q. All right.

4 A. -- over in Montana.

5 Q. The amount of your arm that it covers, was it  
6 different in December of 2001?

7 A. No. I can still see the outlines of the original  
8 tattoo under it.

9 Q. Sir, do you remember what your shoe size was in  
10 December of 2001?

11 A. I believe it was eight-and-a-half, nine. Depends  
12 on what kind of boots I wore.

13 Q. What's your best recollection of when you stole  
14 Jeremy White's briefcase?

15 A. What do you mean, my best recollection?

16 Q. Of when you did the theft.

17 A. Just like I said, just sometime a little bit  
18 before dark. His door was cracked open. I walked  
19 straight into his bedroom, took his briefcase, put it in  
20 my car and drove off.

21 Q. What's your best recollection of the date?

22 A. Of the date?

23 Q. Yes, sir.

24 A. The night before Tonya got shot, because the next  
25 night I was at my sister's house, which was the night

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Tonya got shot, because I knew about it because Forrest Barnes showed up the next morning crying saying Tonya was dead.

Q. Was there anything inside the briefcase besides the box of marijuana?

A. Just a little yellow pencil box, something like kids would take to school and put their crayons in, and marijuana inside that.

Q. Sir, what's your -- what's your best recollection of when you discarded the briefcase?

A. Within minutes after leaving Fro's apartment. I drove out Polk, threw the briefcase and the box out and drove back into town.

Q. Have you ever owned a firearm, sir?

A. I owned a 30-30 Russian made Savage rifle.

Q. When was that?

A. Long time before Tonya got murdered.

Q. Years?

A. A couple years. I believe it was right after I turned 18 or 19.

Q. Do you still own it?

A. Nope.

Q. When did you get rid of it?

A. Pawned it within a week or two of having it.

Q. Did you ever own a handgun?

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Q. But you admit that you did talk with Michael Scanlon about Tonya Hart's murder?

A. I talked with everybody in that jail about it.

Q. Did you tell Michael Scanlon you'd had your picture on the front page of the newspaper twice?

A. No. I told him my name was mentioned in the papers.

Q. Did you tell Michael Scanlon that you had known Tonya Hart because you used to buy drugs from Shorty Linderman?

A. No.

Q. Did you tell Michael Scanlon that you used to buy drugs at Tonya Hart's trailer?

A. No.

Q. Did you tell Michael Scanlon you had at any time been to Tonya Hart's trailer?

A. No.

Q. Did you tell Michael Scanlon that at any time you had run from Michael -- from Tonya Hart's trailer?

A. No.

Q. Did you tell Michael Scanlon anything about jumping fences?

A. No.

Q. Did you tell him you jumped fences as a part of your felony eluding charge?

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A. Nope.

Q. Have you ever seen a high point handgun?

A. No. I may have, but I couldn't -- if you put a picture of one in front of me, I couldn't tell you if it was or wasn't.

Q. Sir, how many times have you been charged with eluding police?

A. Twice.

Q. Once in Latah?

A. Yep.

Q. And once in Whitman?

A. Yep.

Q. And what are you currently incarcerated for?

A. Eluding police.

Q. Do you know your release date?

A. New Year's Eve.

Q. Of this year?

A. Yep.

Q. Is that when you'll top your sentence?

A. Yep.

Q. Is it your intention to top it?

A. That's what I told the Parole Board.

Q. Now, sir, did you know Michael Scanlon before being incarcerated in the Whitman County Jail?

A. No.

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A. No.

Q. Was it a felony you were serving out in Whitman County?

A. Yes.

Q. Did you tell Michael Scanlon you had passed two lie detector tests?

A. Yep.

Q. Did you tell Michael Scanlon that you had given the police the alibi that you were at your sister's house when the shooting took place?

A. Yep.

Q. When you got out of the Whitman County Jail after these conversations with Michael Scanlon, where did you go?

A. My sister, Joy, picked me up from the jail. She took me to Robin Ziegler's house to pick up Jessica Elliott, which me and her were back together again. Got there, found out she was there with another man. So, I left her there and went out to her mom's house in Troy, stayed out there for a couple days and was homeless again.

Q. Did you stay in the area after that, sir?

A. I think shortly after that, I may have went up to Seattle.

Q. Did you at any time after getting out of the

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1 Whitman County Jail go back East to Maryland?  
 2 A. Yeah, I think I did.  
 3 Q. How long did you spend back East?  
 4 A. Every time I went back there, I never spent more  
 5 then a couple months.  
 6 Q. Who -- the time that you went back to Maryland  
 7 after getting out of the Whitman County Jail, who did  
 8 you stay with?  
 9 A. I believe I stayed with Adam Bellman.  
 10 Q. Can you spell that last name for me, sir?  
 11 A. B-E-L-L-M-A-N.  
 12 Q. Are you and he related?  
 13 A. No, just childhood friends.  
 14 Q. Which town?  
 15 A. Brunswick. We were in Frederick, but we knew  
 16 each other from Brunswick when I lived there.  
 17 Q. So, when you -- when you stayed with him after  
 18 exiting the Whitman County Jail, you went to Frederick,  
 19 Maryland?  
 20 A. Yes.  
 21 Q. Does he still live there?  
 22 A. Yep.  
 23 Q. Do you still --  
 24 A. As far as I know, he does.  
 25 Q. Do you still keep in contact with him?

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1 A. Not him, but I keep in contact with people in  
 2 Maryland and Brunswick that pretty much tell me what's  
 3 going on with some people.  
 4 Q. Have you discussed the Tonya Hart murder with  
 5 your sister, Joy, besides what you've already  
 6 testified -- testified about today?  
 7 A. We've talked about it several times.  
 8 Q. When was the last time you and she spoke about  
 9 it?  
 10 A. I think it was on the phone when I was in jail  
 11 here. I got subpoenaed for an October hearing, and  
 12 called her up and just told her I was pretty pissed  
 13 about it, that they're dragging me into it again.  
 14 Q. Did you tell your sister, Joy, that you and David  
 15 Meister broke into White's residence and stole the  
 16 briefcase?  
 17 A. No.  
 18 Q. After the morning of December 12th, 2001 -- and  
 19 that's the day after Tonya Hart was murdered. After  
 20 that morning, did Joy repeatedly confront you to ask you  
 21 if you had any involvement with the murder?  
 22 A. I think she asked me once, because I think she  
 23 knew that I left later on that night when I went to the  
 24 store to get a beer.  
 25 Q. And --

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1 A. Yeah, I think she said, did you do this? Did you  
 2 have anything to do with it? And I told her no.  
 3 Q. When did that conversation occur?  
 4 A. I don't know if it was while Forrest was there or  
 5 after. I don't know. I just know it was the morning  
 6 after.  
 7 Q. Was it -- was it close in time to December 12th,  
 8 2001?  
 9 A. The morning after, she asked me that, so...  
 10 Q. What makes you think Joy knew that you went --  
 11 that you left her apartment on the night that Tonya Hart  
 12 was murdered?  
 13 A. Well, she's a pretty light sleeper. I mean, you  
 14 barely tap on her door when she's asleep, she's up and  
 15 at it. She's got a kid. She's always -- trying to  
 16 always be alert and aware.  
 17 Q. But when -- when you were in her apartment  
 18 sleeping on the couch, she was in the bedroom, right?  
 19 A. Yeah.  
 20 Q. And did the bedroom have a window that had a view  
 21 of the parking lot?  
 22 A. No.  
 23 Q. Sir, when you came into Joy and Shalako's  
 24 apartment on the night of December 11, 2001, the second  
 25 time now, when you -- when you got out of your car with

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1 the sleeping bag or blanket and went inside to go to  
 2 sleep, was Joy on the couch?  
 3 A. I think she was on one of the couches.  
 4 Q. Did she get up for you?  
 5 A. She usually does her normal thing, which is watch  
 6 public access television and just whatever she does.  
 7 Q. So, when -- when you came in --  
 8 A. I don't remember. I don't remember. She might  
 9 have. She might not have.  
 10 Q. So, you just flat don't remember?  
 11 A. I went in. I sat on the couch, laid down for a  
 12 little bit. They went to bed.  
 13 Q. On the night of Tonya Hart's murder, December 11,  
 14 2001, did Joy and Shalako's apartment have one couch or  
 15 more?  
 16 A. I believe it had two.  
 17 Q. When you came in to go to sleep after Shalako  
 18 came out to the car to get you, was the TV on?  
 19 A. I don't remember. It could -- if it was -- like  
 20 I said, if Joy was on the couch watching her TV, it was  
 21 public access. I don't pay attention to little stuff  
 22 like that.  
 23 Q. Sir, did you contact your sister, Joy Thomas, by  
 24 phone around New Year's 2010? Not the New Years that  
 25 just passed here, but New Years a year ago, 2010?

392

1 A. New Years Eve 2010?  
 2 Q. Around that time, one of those nights.  
 3 A. I could have.  
 4 Q. Were you incarcerated at that time, sir?  
 5 A. I don't think so, no. 2010?  
 6 Q. Beginning of 2010, very beginning.  
 7 A. I don't think I was.  
 8 Q. Do you remember calling your sister, Joy, on the  
 9 phone around that time?  
 10 A. Could have. I've always kept in contact with  
 11 Joy.  
 12 Q. Did you bring up the Tonya Hart murder on the  
 13 night -- around the time of New Year's 2010?  
 14 A. Could have. We talk about it quite a bit.  
 15 Q. Did you remind her of things about the night of  
 16 the murder?  
 17 A. I asked her if she remembered the -- some of the  
 18 conversations that we had. I asked her if she  
 19 remembered that I was at her house the night that it  
 20 happened.  
 21 Q. Well, I'm -- I'm referring specifically to the  
 22 area of New Years 2010.  
 23 A. I couldn't give you an exact answer on that.  
 24 Q. You could have done it?  
 25 A. Could have. Might not have. Who knows?

393

1 Q. At any time, did you tell your sister, Joy, that  
 2 you were at her apartment on the night of Tonya Hart's  
 3 murder with Natalie Burns?  
 4 A. Natalie Burns wasn't there.  
 5 Q. At any time, did you tell your sister, Joy, that  
 6 you were at her apartment on the night of December 11th,  
 7 2001, and Rick Moran was there?  
 8 A. Rick was there earlier that day.  
 9 Q. Did you -- did you ever telephone Joy and tell  
 10 her that?  
 11 A. I don't remember doing such a thing. But then  
 12 again, we've discussed this several times. The day of,  
 13 the day before, the day after. I mean, who knows?  
 14 Something might have got mis-said or misplaced in the  
 15 conversation. Who knows?  
 16 Q. Sir, at any time, did you tell your sister, Joy,  
 17 that you were at her apartment on the night of  
 18 December 11th, 2001 playing a game involving choking one  
 19 another?  
 20 A. That was during the afternoon.  
 21 Q. Sir, at any time, did you have a key to Joy's  
 22 home?  
 23 A. No.  
 24 Q. So, when you left to go get the beer on the night  
 25 of Tonya Hart's murder, did you leave her door unlocked?

394

1 A. Yeah.  
 2 Q. You left it unlocked?  
 3 A. Yeah.  
 4 Q. Did you talk to anyone before you left?  
 5 A. I don't think so.  
 6 Q. Tell anybody, I'm leaving to go get beer?  
 7 A. Everybody was asleep. Got up, drove to the  
 8 store, got a beer, drank it on the way back, went  
 9 inside, went to sleep.  
 10 Q. When you got back, no one was up, right?  
 11 A. I don't think so.  
 12 Q. When was the last time, if any, that you and your  
 13 brother, George, discussed Tonya Hart's murder?  
 14 A. I don't remember ever discussing it with him. I  
 15 don't have a good relationship with George. I felt bad  
 16 for him once because he was in a psych -- because he was  
 17 in a psych ward in Orofino for Christmas. So, I had  
 18 them bring him to my house so he could get out for  
 19 Christmas, wouldn't be locked up in there.  
 20 Since then, I've gotten one letter from him  
 21 saying he was all right in Maryland. I found out from  
 22 other people that he was back in Idaho, here in town  
 23 somewhere.  
 24 Q. Sir, when was the first time you had contact with  
 25 the Latah County Prosecutor's Office? Not the Sheriff's

395

1 Office now, the Prosecutor's Office, about the murder of  
 2 Tonya Hart?  
 3 A. Couldn't tell you.  
 4 MR. WHITNEY: Your Honor, may I have an  
 5 exhibit marked?  
 6 THE COURT: You may.  
 7 EXHIBITS:  
 8 (Defendant's Exhibit E marked for  
 9 identification.)  
 10 MR. WHITNEY: Your Honor, may Defendant's  
 11 Exhibit E for identification be shown to the witness?  
 12 THE COURT: Yes.  
 13 BY MR. WHITNEY:  
 14 Q. Sir, you've got a two-page document that's been  
 15 labeled as Defendant's Exhibit --  
 16 A. Yeah, I remember this.  
 17 Q. Hold -- I got to -- we can't talk over each  
 18 other.  
 19 A. Oh, all right.  
 20 Q. It makes it tough on the court reporter.  
 21 A. Yeah.  
 22 Q. All right. So, sir, you've got a two-page  
 23 exhibit marked Defendant's E for identification in front  
 24 of you. Do you recognize it?  
 25 A. Yep.

396

1 Q. Have you had a chance to read it?

2 A. I wrote it.

3 Q. That's your handwriting?

4 A. Yeah.

5 Q. That's your signature?

6 A. Yeah.

7 Q. And you sent it to the prosecutor on August 23rd  
8 of 2010; is that correct?

9 A. Unwillingly sent it to the prosecutor.

10 Q. I didn't catch that.

11 A. I unwillingly sent this to the prosecutor.

12 Q. Unwillingly?

13 A. Yes.

14 Q. Okay.

15 MR. WHITNEY: Your Honor, I move admission  
16 of Defendant's E.

17 THE COURT: Any objection, Ms. Evans?

18 MS. EVANS: May I have just a moment, Your  
19 Honor?

20 THE COURT: Sure.

21 MS. EVANS: I have no objection.

22 THE COURT: Based on that, what's been  
23 marked as Defendant's E is hereby admitted.

24  
25

397

1 EXHIBITS:

2 (Defendant's Exhibit E received into  
3 evidence.)

4 BY MR. WHITNEY:

5 Q. What was unwilling about it, sir?

6 A. I had people in the yard approach me and tell me  
7 if I cooperated or answered any questions or did  
8 anything other than help put reasonable doubt out there  
9 for David Meister to walk off on this murder charges,  
10 that harm was going to be done to me when I got back  
11 into the prison system. I was sat down, and three  
12 people told me what to write down, put it in an  
13 envelope. They took it, put it in a mailbox.

14 Q. Which three people?

15 A. I'm not willing to disclose that. I'll talk to  
16 the prosecutor about it, but I will not sit here and  
17 openly talk about it in court.

18 Q. Why not?

19 A. Because as soon as word gets back down there that  
20 I sat up here and cooperated in this, I'm going to have  
21 problems.

22 Q. And you knew that before you came today, right?

23 A. I've had problems ever since I've been in jail  
24 because of this, since I've been down in prison. Dave  
25 Meister has a lot of friends down there who he's

398

1 influenced for the past eight years that he's had  
2 nothing to do with this. And I've had several of his  
3 friends approach me on this, telling me I better keep my  
4 mouth shut, and that I better come up here and use my  
5 Fifth Amendment right so evidence against me can't be  
6 submitted into court.

7 Q. So, sir, did they -- these three unnamed people,  
8 did they write this for you?

9 A. I wrote it.

10 Q. Did they -- were they with you when you wrote it?

11 A. Yeah.

12 Q. Where were you located inside the prison system?

13 A. Inside the prison system. Like I said, if I have  
14 to discuss this any further, I'll discuss it with the  
15 prosecutors.

16 Q. So, sir, you know all three guys, right?

17 A. Yeah, I know who they are.

18 Q. It was three men?

19 A. Yeah.

20 Q. So, I'm asking you again to name the three men.

21 A. I'm not naming them, no.

22 MR. WHITNEY: Your Honor, I ask that the  
23 witness be directed to answer the question.

24 THE COURT: Mr. Meister (sic), you need to  
25 respond to the question.

399

1 THE WITNESS: My name is not Mr. Meister.

2 THE COURT: I'm sorry.

3 THE WITNESS: I'm not answering the  
4 question. I've already spoke to the prosecutor, and  
5 they know who it is. That's all the further I'm willing  
6 to cooperate with that question.

7 MR. WHITNEY: Your Honor, so at this time,  
8 since the witness is unwilling to testify, I ask his  
9 entire testimony be stricken from the record.

10 THE COURT: Well, I'll take that motion  
11 under advisement. You may continue to inquire.

12 MR. WHITNEY: Thank you, Your Honor.  
13 BY MR. WHITNEY:

14 Q. Mr. Thomas, why are you willing to tell the  
15 prosecutor, but not me?

16 A. Because I know Dave has channels of -- ways of  
17 getting information back to the prison system and --  
18 through his mother and other people who have sent  
19 information about me to the prison system.

20 Q. But you've lied many times in your life, right?

21 A. So what. I didn't kill nobody. I ain't trying  
22 to get out of prison for a murder that I didn't do. I  
23 mean...

24 Q. Why not lie to these three unnamed men and tell  
25 them that you've done what they asked?

400

A. Because David Meister's mother will be sending a letter down there saying what I've said in court today, to a man that's supposed to be living with her when he gets out, who is in the same institution as I am.

Q. So, what makes you think that, sir?

A. What's that?

Q. What makes you think that Mr. Meister's mother would do that?

A. Because the guy that's getting letters has told me that Dave's mom writes and that he's going to live with her when he gets out.

Q. Is this one of the three men you won't name?

A. This is -- he wasn't personally one of the ones of the three.

Q. So, who's he?

A. He just goes by the name, Drifter.

Q. Drifter? You don't know any -- you don't know any other identifying --

A. I don't know his name.

Q. Drifter's the only thing you know?

A. Yep.

Q. How many times --

A. That's what he goes by. A lot of people in the prison system have nicknames, keep their ID badges turned around, and that's all they go by.

401

Q. So, sir, looking at second page of Defendant's E, it indicates that you were at ISCI when you wrote this.

A. Yes.

Q. Is that accurate, sir?

A. That is right.

Q. What tier were you on?

A. I was in Unit 14.

Q. Well, the -- your return address here says Housing Unit 8. Is that not accurate?

A. I was placed in Unit 8 for a while, but that's not accurate.

Q. So, at the time you wrote this, were you in Unit 8 or Unit 14?

A. I was in Unit 14.

Q. Now, sir, the postmark -- you'd agree with me, the postmark reads, 23 August 2010, right?

A. I can't read what it says. It's all smeared.

Q. I don't see a date on the letter, sir. Am I missing one?

A. Excuse me?

Q. The -- the handwritten part of your letter, the first page of the Exhibit E, I don't see a date on there. Is there a date on there anywhere?

A. There's -- not referring to -- no, I don't think so.

402

Q. Okay. Do you know what date you wrote this?

A. No, I don't.

Q. Does the postmark that appears to read, 23

August 2010, does that refresh your memory at all as to when you wrote this letter?

A. No.

Q. But you're certain you wrote the letter from Housing Unit 14?

A. I was told by three people to write this letter and send it off or harm was going to be done to me. I did what I was told to do, because out in the yard, people do not hesitate to go after one another and do things to them. So, I do what I was told. If you look in your discovery packet, you'll see later on I wrote a letter to Michelle Evans stating I'd cooperate fully when I was out of that institution and in another institution where I felt safe enough to write a letter.

Q. But, sir, I'm asking you when you wrote this letter. And do you have any recollection at all when it was sent?

A. No.

Q. Sir, you are testifying today that you were coerced by three men that you won't name; is that right?

A. Yes.

Q. How long after they coerced you did you do the

403

act of writing the letter?

A. I think I wrote the letter right then and there.

Q. They came to you, you sat down and had a piece of paper and wrote?

A. I'm pretty sure that's how it went.

Q. Well, were you in Unit 14 then when you -- when you actually did the writing of the letter?

A. I'm pretty sure I was.

Q. The three --

A. I was -- I was in Unit 8 for a while also, so...

I was put in the hole, because I was asked if I wanted to be put under protective custody.

Q. Who asked you that?

A. My counselors and the jail staff.

Q. Why did they ask you that?

A. Because this case and another case I was involved in.

Q. Which case was that?

A. I'm not going to disclose that. It has nothing to do with this.

Q. So, did that motivate you in any way in the writing of this letter, the other case?

A. No.

Q. So, sir, the three men that you won't name, were they also in Unit 14?

404

1 A. No. They're in different places of the prison.  
 2 Q. So, where inside the prison were you when the  
 3 three men approached you?  
 4 A. I think originally when I was originally  
 5 approached on this was in the gym area.  
 6 Q. What happened?  
 7 A. I was asked if I was Lane Thomas, told them yeah.  
 8 Then I was pretty much told in not so many words to keep  
 9 my mouth shut about anything against David Meister.  
 10 Q. Was the letter mentioned?  
 11 A. Huh?  
 12 Q. Was the letter mentioned?  
 13 A. I was told to write -- I was told to write a  
 14 letter to the prosecutor saying I don't want no part of  
 15 this.  
 16 Q. Did all three men repeat to you, write the  
 17 letter?  
 18 A. One guy did mainly all the talking. But when you  
 19 got more than one guy coming up to you in the prison,  
 20 they're all backing the guy they're coming with.  
 21 Q. Were the other -- the talking guy, were the other  
 22 two men close enough to him that they could overhear him  
 23 speaking?  
 24 A. Oh, yeah.  
 25 Q. Now, this was in the gym area of the prison,

405

1 right?  
 2 A. Yeah.  
 3 Q. Now, sir, when did you go get the piece of paper  
 4 to write the letter?  
 5 A. Excuse me?  
 6 Q. When did you go get the piece of paper on which  
 7 you wrote this letter?  
 8 A. I believe one of the guys had it with him, and I  
 9 wrote it right there.  
 10 Q. So, they brought -- they brought you a piece of  
 11 paper and said, are you Lane Thomas? You got to write  
 12 this letter?  
 13 A. Yeah, pretty much.  
 14 Q. Did they bring a pen?  
 15 A. Huh?  
 16 Q. Did they bring a pen?  
 17 A. I don't know. I always carry a pen on me in case  
 18 I have to stick it in somebody's neck for trying to  
 19 attack me. So, I probably had my own pen.  
 20 Q. Did the writing of the letter occur in the  
 21 gymnasium?  
 22 A. I'm pretty sure.  
 23 Q. Was anyone else present besides you and the three  
 24 unnamed?  
 25 A. There's 100 people in the gym at any given time,

406

1 so I'm pretty sure there was other people around.  
 2 Q. How long did you talk to them before you wrote  
 3 the letter?  
 4 A. It wasn't long. It was pretty much, you'll do  
 5 this, and that's how it was.  
 6 Q. Did you say any word of protest?  
 7 A. I was pretty scared, so I mean... Never being in  
 8 the prison before, not knowing these people, I'm not  
 9 going to argue with them.  
 10 Q. Did you say any word at all to them before you  
 11 sat down and wrote the letter?  
 12 A. I don't think I said too much. I think I  
 13 mumbled, this is bullshit, or some other things, but  
 14 that was about it.  
 15 Q. Now, sir, how long did it take you to write the  
 16 letter, Exhibit E?  
 17 A. I don't remember. I was pretty much in a state  
 18 of panic.  
 19 Q. After you wrote the letter, did you maintain  
 20 possession of it?  
 21 A. Excuse me?  
 22 Q. After you wrote the letter in the prison  
 23 gymnasium, did you keep possession of the letter?  
 24 A. I sealed it, and one of the guys took it.  
 25 Q. Who provided the envelope?

407

1 A. What's that? They had it -- they had it with  
 2 them.  
 3 Q. They had the envelope --  
 4 A. If people want something done in the prison,  
 5 they're going to have everything they need right there  
 6 to do it. They're not going to sit there and screw  
 7 around and wait for a guard to come up and see what's  
 8 going on. There might be 100 people around you, but  
 9 every one of them is going to turn their head and not  
 10 know nothing.  
 11 Q. So, looking at the second page of Exhibit E,  
 12 that's your handwriting in the return address area,  
 13 correct?  
 14 A. That's my name, but that's all I put on it.  
 15 That, and my DOC number.  
 16 Q. You didn't put Housing Unit 8?  
 17 A. No. They asked me for my name and DOC number and  
 18 put it on there.  
 19 Q. You didn't write ISCI?  
 20 A. I don't believe so.  
 21 Q. Now, we're still on -- we're still on Page 2 of  
 22 Exhibit E.  
 23 A. Yeah. I don't believe so.  
 24 Q. You've got the exhibit in front of you, right?  
 25 A. Yeah.



408

Q. The letters, I-S-C-I, you didn't write those?

A. I don't believe so.

Q. And how about where it says, P.O. Box 14? Did you write that or not?

A. I don't believe I did that either.

Q. How about Boise, that word? Did you write that?

A. I don't believe I did, sir.

Q. Idaho, did you write that?

A. No.

Q. The zip code? Did you write the zip code?

A. They asked me to write my name and DOC number on it.

Q. That's the -- that's the only thing you wrote on the envelope?

A. And I wrote the address of the Prosecutor's Office because I know the address here. I used to have to write letters to Bill Thompson on unsupervised probation, so I had the address memorized.

Q. Sir, when was the first time you reported to anyone that you were coerced to write Defendant's E?

A. I told my lawyer about it when I got brought up here.

Q. Did you ever tell the prosecutor?

A. I spoke to my lawyer about it first and -- to determine whether it would be a good idea to talk to the

410

1 A. Prosecutor's Office.

2 Q. You got brought up outside the jail?

3 A. Yep.

4 Q. Did you go in their little conference room?

5 A. Yep.

6 Q. Which two police officers?

7 A. Officer Besst and another one. I don't remember his name.

9 Q. One of the officers in the courtroom today? Do you see him?

11 A. No.

12 Q. Not -- not one of these guys?

13 A. No.

14 Q. Sir, how long was that meeting?

15 A. Hour.

16 Q. What -- what time of day was it?

17 A. Afternoon.

18 Q. Was it during normal business hours?

19 A. Yes.

20 Q. Sir, what else did you tell Ms. Evans besides that you had been coerced?

22 A. I don't think I told her at that point yet about this.

24 Q. You didn't tell --

25 A. I think I had already told my lawyer about it,

409

prosecutor or not about it.

Q. Did you ever tell the prosecutor about it?

A. Yeah.

Q. I'm sorry?

A. Yes.

Q. When did you tell the prosecutor?

A. A few days ago.

Q. I'm sorry, sir, I can't hear you that well.

A. A few days ago.

Q. A few?

A. Yeah.

Q. Which -- which day of the week was it?

A. Last week sometime.

Q. When did you meet?

A. I don't remember what day we met on.

Q. Sir, can you give me anything to narrow it down? The day after you got here?

A. It might have been Friday. I don't know. Could have been.

Q. Now, sir, when you had the meeting with the prosecutor, which prosecutor was it?

A. Michelle Evans.

Q. Was anyone else present?

A. Two police officers, my lawyer.

Q. Where did the meeting occur?

411

1 and I don't think I told her at that point about this.

2 Q. What else did you tell her about anything?

3 A. Not much really. We discussed the case a little bit. And I wasn't sure at that point whether I wanted to have any involvement in it. Like I say, I've expressed to her concerns I had for my safety when I went back to the prison system. I expressed to her the concerns I had about assumptions that people were making.

10 People are assuming I'm coming up here to testify against Dave Meister. I'm not up here to testify against nobody. I'm up here to testify that I had nothing to do with any of this, nor did I make any -- tell anybody I had anything to do with it.

15 Q. Did the prosecutor, Ms. Evans, address the concerns you expressed about your safety?

17 A. She said there's really nothing she can do about it. I mean, what can she do about it? I'm in the prison system. There's nothing she can do.

20 Q. Now, sir, I --

21 A. What can she do, send a letter down there saying, oh, offer him to be put in PC, which I'll sign another paper refusing it.

24 Q. You don't want to be in protective custody?

25 A. No. I'll keep fighting like I do every week down

412

1 there. I'll keep getting into fights and beating the  
2 shit out of people so I don't have to live in a cage  
3 like an animal.

4 Q. Sir, I believe -- correct me if I'm wrong. I  
5 believe just a minute ago you said you had other  
6 concerns about testifying besides your safety; is that  
7 right?

8 A. That's my main concern I had.

9 Q. Any others that you expressed when you met with  
10 the prosecutor last week?

11 A. Well, just the assumptions that people are going  
12 to make of what's going on up here down in the prison  
13 system. I'm worried about Meister's mother sending  
14 letters to Drifter down there about me. I'm worried  
15 about her sending letters to another man in the yard  
16 about me.

17 Q. Which other man?

18 A. Just a guy I know as RP.

19 Q. I'm sorry?

20 A. A guy I know as -- they call him RP.

21 Q. RB?

22 A. RP.

23 Q. RP?

24 A. Yep.

25 Q. Now, when you met with the prosecuting attorney

413

1 and the two police officers and your lawyer last week  
2 for about an hour, did you talk about the things you  
3 would say today during your testimony?

4 A. I think she -- when we met earlier this week, she  
5 went over what she was going to ask me, but that was  
6 about it.

7 Q. She went over the questions that she asked you  
8 today?

9 A. She -- there really wasn't any direct questions.  
10 She was like, this is how I'm going to come in, and this  
11 is what I'm going to say. She never said, hey, I'm  
12 going to ask you this and you'll answer this way.  
13 Nothing like that.

14 Q. But you had -- you had pretty good idea what you  
15 were --

16 A. Pretty much how it's going to go when I come in  
17 here.

18 Q. You were ready?

19 A. Still not really exactly ready.

20 Q. But you --

21 A. I don't want to be sitting here.

22 Q. You were ready for her questions anyway, right?

23 A. Yeah, I'd say so.

24 Q. You had an idea what you'd say?

25 A. Yeah.

414

1 Q. You thought about --

2 A. Same thing I've been saying -- same thing I've  
3 been saying for years. I had nothing to do with this,  
4 so...

5 Q. But between the time you met with the prosecutor  
6 last week and today, you thought about how you'd testify  
7 on direct examination, right?

8 A. Not really. I mean, I get asked questions, I'll  
9 answer them.

10 Q. Sitting downstairs, you didn't go over it in your  
11 mind?

12 A. Not really.

13 Q. Sir, did -- when you met with the prosecuting  
14 attorney, the two police officers and your lawyer last  
15 week, did anyone tell you what to anticipate for  
16 cross-examination?

17 A. They said they don't have the slightest clue.  
18 Pretty much, they don't know what you're going to ask  
19 me.

20 Q. Did they tell you anything about David Meister?

21 A. No.

22 Q. Did they tell you anything about Scott Chapman?

23 A. Who the hell is Scott Chapman?

24 Q. Sitting next to me, the other lawyer for David  
25 Meister.

415

1 A. Said you're pretty good lawyers.

2 Q. Did they tell you anything about me.

3 A. No. Just you're a pretty good lawyer. That's  
4 about it. I mean...

5 Q. Did you make any deal in exchange for your  
6 testimony today?

7 A. Nope.

8 Q. Do you have an expectation of benefit for being  
9 here today and testifying?

10 A. Nope. I have an expectation of going back down  
11 to the prison yard and dealing with several inmates that  
12 are going to come at me on this.

13 Q. So, why did you choose to do it then?

14 A. It's the right thing. I had no involvement in  
15 this. I've been waiting for eight years to sit in front  
16 of that piece of shit right there and have him hear me  
17 say I had nothing to do with this, because you know I  
18 had nothing to do with this.

19 Q. What do you -- when you say --

20 THE WITNESS: Why don't you look at Mr. Hart  
21 over there and tell him you had nothing to do with it.

22 You can't do it, Dude. You know you killed her?

23 BY MR. WHITNEY:

24 Q. Mr. Thomas, you're referring to Mr. Meister as a  
25 piece of shit, aren't you?

416

1 A. Well, he is.

2 Q. But -- but you don't know if he killed Tonya Hart  
3 or not, do you?

4 A. Anybody that goes in to the police and confesses  
5 to a murder, yeah, he did it.

6 Q. So, if a person goes to the police, what they say  
7 is true, right?

8 A. Why would you go in and confess to something like  
9 that if you didn't do it? You got to be a complete  
10 utter frickin' moron to go in front of the police and  
11 say, I killed somebody, help me out. No, they ain't  
12 going to help you out.

13 Q. That's all you know?

14 A. He confessed to it.

15 Q. That's all you know about David Meister?

16 A. And all the evidence points at him to do it. I  
17 had nothing to do with it.

18 Q. But --

19 A. And Tonya Hart's family is never going to have  
20 any peace until he quits these charades that he's  
21 pulling, getting these stupid re-trials, coming into  
22 court over and over and taking the Hart family through  
23 this over and over again. It's ridiculous.

24 Q. But you didn't even know David Meister before  
25 Tonya Hart was murdered?

417

1 A. No, I didn't. Don't even know him now. Don't  
2 want to know him.

3 Q. You've never seen him at all in the prison  
4 system, have you?

5 A. Nope.

6 Q. Never had any interaction with him?

7 A. Nope.

8 Q. Never said two words to him?

9 A. Nope.

10 Q. Except for today?

11 A. Pretty much.

12 MR. WHITNEY: Your Honor, may I have another  
13 exhibit marked?

14 THE COURT: You may.

15 MR. WHITNEY: I'm handing a copy to the  
16 prosecuting attorney.

17 EXHIBITS:

18 (Defendant's Exhibit F marked for  
19 identification.)

20 MR. WHITNEY: And, Your Honor, may the  
21 witness be shown Defendant's Exhibit F for  
22 identification?

23 THE COURT: Yes.

24 MR. WHITNEY: Thank you, Your Honor.  
25

418

1 BY MR. WHITNEY:

2 Q. Mr. Thomas, you've got in front of you a two-page  
3 document that's been marked as Defendant's F for  
4 identification. I want you to take a minute and read  
5 that over and tell me if you recognize it.

6 A. I recognize it. It's what I wrote.

7 Q. It's your handwriting?

8 A. Yes.

9 Q. And, sir, the second page of the exhibit, that's  
10 your handwriting too, isn't it?

11 A. Yeah.

12 Q. And you wrote this letter about this case just a  
13 few months ago, right?

14 A. Yeah. I was in another institution, and I wanted  
15 Ms. Evans to know that if they needed me to come up, I  
16 would.

17 MR. WHITNEY: Your Honor, I'd move admission  
18 of Defendant's F.

19 THE COURT: Any objection?

20 MS. EVANS: No, Your Honor.

21 THE COURT: Defendant's Exhibit F is hereby  
22 admitted.

23 EXHIBITS:

24 (Defendant's Exhibit F received into  
25 evidence.)

419

1 BY MR. WHITNEY:

2 Q. So, sir, you were at SICI when you wrote this  
3 letter, Defendant's F, correct?

4 A. Yeah.

5 Q. And, sir, were you coerced at all to write  
6 Defendant's F?

7 A. This Exhibit F, you mean?

8 Q. Yes, sir.

9 A. No. I wrote this my own free will.

10 Q. Is everything in there true?

11 A. Yep.

12 Q. Sir, I want you to please look at the second page  
13 of Defendant's F. That's the address for the  
14 prosecuting attorney. That's your handwriting, right?

15 A. Yep.

16 Q. And the return address, is all of that your  
17 handwriting?

18 A. Yeah.

19 Q. And it says, Housing Unit -- I think that says  
20 N -- well, what does it say? I can't read it.

21 A. NDF-13.

22 Q. Is that accurate, sir?

23 A. Yeah.

24 Q. And, sir, do you see there's a stamp on the lower  
25 right-hand corner of -- well, skip that, sir. Strike

420

1 that. Let me ask you this. Go to the front -- the  
2 first page of Defendant's F. In the upper right-hand  
3 corner, it says, 10/21/10. Is that the date you wrote  
4 this letter, sir?

5 A. Yes.

6 MR. WHITNEY: Your Honor, I'm done with the  
7 exhibits with this witness, if they may be retrieved.

8 BY MR. WHITNEY:

9 Q. So, sir, you no longer have any exhibits before  
10 you; is that correct?

11 A. Yep.

12 Q. Do you know Wes Peterson?

13 A. Yeah.

14 Q. Did you know Wes Peterson in 2001?

15 A. Didn't hang out with him, but I knew who he was.

16 Q. How did you know him?

17 A. Just a druggie.

18 Q. Did you ever steal drugs from him?

19 A. Nope.

20 Q. Did you ever steal anything from him?

21 A. Nope.

22 MR. WHITNEY: Can I have just a minute, Your  
23 Honor?

24 THE COURT: You may.

25 (DISCUSSION HELD OFF THE RECORD.)

421

1 MR. WHITNEY: No other questions, Your  
2 Honor.

3 THE COURT: Anything in light of that,  
4 Ms. Evans.

5 MS. EVANS: I do have some redirect, Your  
6 Honor. I -- would it be possible to take a small break?  
7 I have to arrange pick up for my children.

8 THE COURT: Sure. Why don't we go ahead and  
9 take about ten minutes.

10 MS. EVANS: Thank you.

11 THE WITNESS: I'd also like to have some  
12 time with my lawyer.

13 THE COURT: Sure.

14 (COURT IN RECESS.)

15 THE COURT: Why don't we go ahead and go  
16 back on the record. Mr. Meister and all counsel are  
17 present.

18 Ms. Evans, if you'd like to redirect at this  
19 time.

20 MS. EVANS: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. EVANS:

23 Q. Lane, I just have a few questions to follow up  
24 some of the questions that Mr. Whitney asked you. I'm  
25 going to go back through them. One of them is, you

422

1 indicated that regarding the residence on North Polk  
2 Extension, that you lived there from the age of about 16  
3 or 17 'til the age of 20?

4 A. Something like that.

5 Q. Was it continuous, or was it kind of on and off?

6 A. After I turned 18, it was -- if I needed a place  
7 to go back home to because I had nowhere to go, that's  
8 where I went. So, I'd say off and on after 18.

9 Q. Okay.

10 A. And that was all the way up until Jerry passed  
11 away.

12 Q. And had -- had Jerry passed away before the  
13 murder of Tonya Hart?

14 A. I believe so.

15 Q. Do you know how long?

16 A. No, I don't.

17 Q. Okay. So, at the time of -- at the time that  
18 Tonya was murdered, you and your family weren't living  
19 out on North Polk Extension; is that right?

20 A. No.

21 Q. Okay. You were asked whether or not you talked  
22 with Joy about wanting to steal from Jeremy White, and  
23 you said you had not talked with her?

24 A. No, I didn't.

25 Q. Why is that?

423

1 A. What are you referring this to? Before I stole  
2 from him or after?

3 Q. Before you stole from him.

4 A. Joy knew that if I knew of anybody that had any  
5 drugs or anything laying around, that I'd most likely  
6 probably take them. I mean, she knew what I was up to  
7 back in those days, the lifestyle I lived. I mean, she  
8 felt sympathy for me, let me stay at her house now and  
9 then, but as far as her -- you know, me wanting to go  
10 like, hey, I'm going to steal from one of your friends,  
11 you know, I'd never -- if I told her that, I'd have been  
12 kicked out of her house.

13 Q. And Jeremy White was one of her friends?

14 A. I believe so.

15 Q. Now, I think you had said -- I believe that  
16 Mr. Whitney was asking you whether Don King had told you  
17 whether Tonya Hart had been shot in the face, the head  
18 and chest?

19 A. Yeah.

20 Q. Okay. Did you hear that information on the news  
21 at all?

22 A. I believe I heard that from Don. I believe --  
23 like I said, I don't remember where I heard it from, who  
24 I heard it from, but I heard it shortly after her murder  
25 from everybody.

424

1 Q. Okay. Was there a fair amount of talk going on  
2 as far as the details of the case?

3 A. Around town? The people I knew?

4 Q. Yes.

5 A. Everybody talked about it. Everybody I knew  
6 wanted to know something about it or have some kind of  
7 involvement in helping find out who did it and have them  
8 locked up for it.

9 Q. And how is it that you found out about the  
10 footprints where you thought that the area of the car  
11 would be important?

12 A. I believe -- I believe it's from one of the  
13 officers said something -- I don't know if it was  
14 somebody who told me, if it was one of the cops, but  
15 somebody said something about footprints through a field  
16 going to North Polk Extension.

17 Q. Okay. Was that also something that was commonly  
18 talked about amongst your group?

19 A. Yes. One of theories that everybody had is that  
20 the prints went all the way from Tonya's trailer to the  
21 back of my brother's house.

22 Q. And where was your brother's house?

23 A. In the trailer court on Polk Extension.

24 Q. Okay. Is it the one that's on Empire Lane?

25 A. Yeah.

425

1 Q. Okay. All right. The first time you were  
2 interviewed by Don King on December 13th of 2001, did  
3 you -- did that interview also take place in that little  
4 interview room at the Sheriff's Office?

5 A. It was in some room in the Sheriff's Office, but  
6 I don't think it was the same one as when they brought  
7 me up from the jail.

8 Q. So, do you recall -- do you recall the order of  
9 what happened, whether you talked to him first and then  
10 wrote a statement or wrote a statement and then talked  
11 to him?

12 A. I don't recall the order. I believe we talked  
13 for a while first, and then I wrote the statement.

14 MS. EVANS: Your Honor, may I have this  
15 marked?

16 THE COURT: You may.

17 EXHIBITS:

18 (State's Exhibit No. 7 marked for  
19 identification.)

20 BY MS. EVANS:

21 Q. If you could take a moment just to look that  
22 over, and then let me know when you're done with that.

23 A. (Witness (Witness complies.)) I've looked it  
24 over.

25 Q. All right. And did that refresh your

426

1 recollection as to the sequence of events?

2 A. I'm pretty sure that we talked about it before I  
3 wrote a statement, so...

4 Q. Okay. And when you said you talked about it, is  
5 that when you said that you were unsure of the date, but  
6 you said that Don King suggested an on or about?

7 A. Yeah. And I'm still unsure of the date, but I  
8 know that it was not on the night of the murder.

9 Q. Okay. Mr. Whitney was asking you about your  
10 tattoos that you have?

11 A. Yes.

12 Q. And you indicated three. And one's on your right  
13 shoulder blade, your right shoulder and your right  
14 forearm?

15 A. Yes.

16 Q. Did you have any tattoos on your left arm in  
17 December of 2001?

18 A. Yeah.

19 Q. Okay. What are those?

20 A. The three that I --

21 Q. On your left.

22 A. Oh, on my right arm. On my left arm?

23 Q. Yes. Do you have any on your left?

24 A. Yeah. I've got Chicken Hawk on my left arm.

25 Q. Did you have that back in December of 2001?

427

1 A. No. And I've got one on my shoulder that I  
2 didn't have then either.

3 Q. Okay. So, the -- the tattoos that you have now  
4 on your left side you did not have in December of 2001?

5 A. Correct.

6 Q. Do you recall meeting with the prosecutor at the  
7 time, Robin Eckmann, and Kurtis Hall in -- I believe it  
8 would have been in the jail? Do you remember meeting  
9 them in the jail --

10 A. I think so.

11 Q. -- in 2003? I'm sorry.

12 A. I think so.

13 Q. Okay. Do you remember talking with Robin?

14 A. I've been talked to so many times by police about  
15 it, I mean, I vaguely remember it.

16 Q. Okay. Well, I believe that Mr. Whitney asked you  
17 the first time that you made contact with the  
18 Prosecutor's Office about this case. Do you -- and  
19 you thought it was referring to the two letters,  
20 Exhibits E and F?

21 A. Yeah.

22 Q. Okay.

23 MR. WHITNEY: I object to that question,  
24 Your Honor. Characterizing my question.

25 THE COURT: I'll overrule the objection.

428

1  
2 BY MS. EVANS:  
3 Q. So, were those two letters your first contact  
4 with the Prosecutor's Office about this event?  
5 A. Besides meeting with Robin Eckmann, I mean, me  
6 being involved in this case, yeah.  
7 Q. Okay.  
8 A. I mean, the past few years, yeah.  
9 Q. Okay. But early on back in 2003, you met with  
10 the prosecutor and discussed --  
11 A. Yeah.  
12 Q. -- discussed what you knew?  
13 A. Yeah.  
14 Q. Lane, I'm going to ask you a question, and  
15 it's --  
16 MS. EVANS: Your Honor, I'm going to ask  
17 you, if I may, first I have an area that I forgot to ask  
18 Mr. Thomas about in my direct. And I know that it  
19 wasn't part of cross-examination, but I would ask leeway  
20 to be able to ask him questions about Lacie Roach.  
21 MR. WHITNEY: Your Honor, we'd object to --  
22 it's beyond the scope of direct.  
23 THE COURT: Well, I think you're right, but  
24 I'm going to overrule it, because I'd just like to get  
25 everyone done with the questioning of this witness. So,

429

1 you may.  
2 MS. EVANS: Thank you.  
3 BY MS. EVANS:  
4 Q. Lane, do you know somebody by the name of Lacie  
5 Roach?  
6 A. Yes.  
7 Q. And who is she?  
8 A. She was a friend of my sister, Joy's, that lived  
9 in Clarkston, Washington.  
10 Q. And did you ever have contact with Lacie Roach?  
11 A. Yeah.  
12 Q. Okay. When was it that you met her? Do you  
13 recall?  
14 A. I don't remember the year I met her. It was  
15 2003, 2004, somewhere in that area.  
16 Q. What was the nature of your relationship with  
17 her?  
18 A. Ran into her once in a while. She's a friend of  
19 my sisters, and I bought drugs from her. Or she was  
20 kind of a middle man more like it.  
21 Q. What does that mean, a middle man?  
22 A. She didn't actually have them to sell, but she  
23 knew where to go get them. I'd give her the money,  
24 she'd go get them, bring stuff back.  
25 Q. You gave her money to buy drugs?

430

1 A. Yeah.  
2 Q. Did you ever have much money to buy drugs?  
3 A. Oh, yeah.  
4 Q. Tell us about that.  
5 A. I usually would buy an ounce of meth at a time,  
6 which went from 1,000 to \$1200 then. The last contact I  
7 had with her, I give her \$1200 to get me an ounce, and  
8 she never showed up with it. I went to her apartment  
9 sometime after that, knocked on the door and told her I  
10 wanted my money. She pretty much told me screw off,  
11 shut the door. So, I went outside and kicked the side  
12 of her car in.  
13 Q. Okay. Do you -- do you remember when that was  
14 that you had contact with her?  
15 A. 2005 somewhere. I don't know.  
16 Q. Did you ever have an incident in November of 2004  
17 with Lacie where you went to her house and threatened  
18 her?  
19 A. I think it was the incident I'm talking about. I  
20 kicked her car, but I never made a direct threat to her.  
21 I told her I wanted my money. She didn't give me my  
22 money, so I just went out and -- I mean, if she isn't  
23 going to pay me, she can put \$1200 into fixing her car.  
24 Q. Okay. Where did you get that 1200 bucks to front  
25 to her?

431

1 A. Another friend of mine gave it to me to get him  
2 some dope.  
3 Q. Okay.  
4 A. I should say associate. He really wasn't a  
5 friend. I didn't know him that well, so...  
6 Q. Okay. And who was that?  
7 A. He went by the name of Sidewinder. I ran around  
8 with a lot of bikers down in Lewiston, wanna be bikers.  
9 Q. So, he gave you 1200 bucks, and you gave it to  
10 Lacie to go get you some --  
11 A. Yeah.  
12 Q. -- drugs?  
13 A. Right.  
14 Q. And then she didn't come through?  
15 A. That's right.  
16 Q. Okay. What about her boyfriend, Justin? Did you  
17 know him?  
18 A. I know him as Bud. Everybody called him Bud.  
19 Q. Did you deal with him for drugs?  
20 A. No. He was more Shalako's friend. They were  
21 kind of -- him and Shalako were into playing Everquest  
22 and stuff like that. So, he was -- I just didn't have  
23 nothing to do with him.  
24 Q. Okay. Did you ever make a statement to Bud that  
25 Lacie would be one of the top three females you would

rape?

A. I wouldn't touch her.

Q. Why is that?

A. Everybody that -- because she ain't a white girl. I don't go outside my race in any relationships with anybody.

Q. Okay.

A. Never have. Never will. You can ask anybody that knows me. If you're not of the white race, I don't want nothing to do with you.

Q. Okay. Did you ever -- during your conversation or interaction with Lacie regarding this drug deal, did you ever tell her that you had killed a girl?

A. No.

Q. Did you ever tell her that somebody else was doing your time for it?

A. No.

Q. So, if she made a statement to that effect, it would be a lie?

A. Yes, that would be a total 100-percent lie.

Q. When you went up there to get your money back from her, did you approach her in an angry manner?

A. Oh, yeah. I was mad. Had another guy telling me I better get his money. He was pretty upset.

Q. And how did she respond to it?

433

A. I knocked on her door and asked her, I said, what's going on? I said, why haven't you got a hold of me? And she said, you're pretty much burnt. I'm like, well, what do you mean I'm burnt? She's like, I can't get you nothing, and I lost your money. And I told her, I said, I want my money. Go in there in your house and get it. I know you have it. I know you ripped me off. And that's when she shut the door, and that's when I went and just started destroying her car.

Q. Did she ever have a baseball bat?

A. No.

Q. What did she do when you started destroying her car?

A. Started kicking the side of it in. Just started at the front and started working back.

Q. Did she do anything about that?

A. No, she didn't. She didn't come out or nothing.

Q. Did the police get called? Did they -- anybody come out and stop you?

A. Nope. And I was out there for quite a few minutes. I mean -- when I left, I pulled out of there in my van. Never saw a cop one, nothing.

Q. Okay. Did you have any other interaction with Lacie after that?

A. No. Never spoke with her after that again.

Q. Do you know where she is right now?

A. Last I heard, she was in Texas. And I knew she was still friends with my sister, Joy. So, I mean, if I ever went to my sister, Joy's, after that, I made it a point to call first and see if she was there, because Joy just avoids confrontation in Joy's house because she did have children in her house.

Q. So, she's still -- she was still in the area after your confrontation with her?

A. For a little while. She went to Texas shortly after. I wasn't the only person she ripped off. She had a lot of people in the Valley mad at her. I mean, thousands of dollars she had fronted to her. And right before she went to Texas, she had thousands fronted to her and left with it.

MS. EVANS: Thank you. I don't have any further questions.

THE COURT: Thank you, Ms. Evans. Mr. Whitney?

MR. WHITNEY: Your Honor, for starters, the defense would move admission of Plaintiff's 7 under Rule 612(c), the refreshing recollection rule.

THE COURT: Any objection to that?

MS. EVANS: No, Your Honor.

THE COURT: Based on that, we'll go ahead

435

and admit Plaintiff's 7.

EXHIBITS:

(State's Exhibit No. 7 received into evidence.)

RE CROSS-EXAMINATION

BY MR. WHITNEY:

Q. Sir, do you still have Plaintiff's Exhibit 7 in front of you?

A. Yes.

Q. Sir, I'd like you to take a minute and read it. It's a two-page document, right?

A. Yes.

Q. It's a report by Deputy Don King; is that correct, sir?

A. That's what it says at the top.

Q. It's about you, right?

A. Yeah.

Q. Sir, I want you to read that report, and then I'm going to ask you if anything in there is inaccurate, all right? So --

A. Go head. I've already read it.

Q. You've already read the whole thing?

A. I've read it.

Q. Anything in there inaccurate?

A. The part where it says that Lane told me he had

436

1 been out on North Polk the night that -- the night of  
2 the homicide, that's inaccurate.

3 Q. So, the deputy's --

4 A. I came -- the conclusion we came up with, that it  
5 must have been that night. I never -- and that's why I  
6 wrote it in my statement.

7 Q. So, where the deputy says that information, that  
8 is inaccurate; is that correct?

9 A. Yeah. Well, I did write it in my statement, but  
10 that's what I was led to believe, that it was that  
11 night. And it wasn't that night.

12 Q. But you're saying now that you didn't orally tell  
13 Deputy King that you were on North Polk Extension on the  
14 night of Tonya Hart's murder?

15 A. I believe I told him I could have been, and we  
16 couldn't figure out what night it was.

17 Q. Is your testimony today that you could have been?

18 A. My testimony today is that I was not.

19 Q. All right.

20 A. If I was out there on Polk Extension between  
21 10:00 and 10:45, then why in my sister's statement does  
22 it say I got to her house at 9:52?

23 Q. Well, when did you see your sister's statement?

24 A. I know everything my sister tells people. Me and  
25 her talk a lot. We've talked about this case several

437

1 times.

2 Q. Did you know your sister wrote a statement?

3 A. Yeah.

4 Q. How did you know?

5 A. She told me she wrote a statement.

6 Q. Did she tell you before she wrote it?

7 A. What's that?

8 Q. Did she tell you she was going to write a  
9 statement before she wrote it?

10 A. Everything she said about this case to the police  
11 or anybody, she's been open with me about, just as I've  
12 been open with her about discussing this case.

13 Q. And you and she talked about the content of her  
14 statement before she gave it to the police, right?

15 A. I think this is after.

16 Q. But you and she talked about that time,  
17 9:52 p.m., before she gave that time to the police,  
18 didn't you?

19 A. I think it was after.

20 Q. When was the first time you discussed 9:52 p.m.  
21 with your sister, Joy?

22 A. I don't know. Pull last year's phone records  
23 from the jail.

24 Q. Was it in the last year, sir?

25 A. I believe so. We've talked on the phones in the

438

1 jail about this several times. I don't remember when it  
2 was, but --

3 Q. Could it have been more than a year ago?

4 A. I'm not sure.

5 Q. Could it have been more than two years ago?

6 A. I don't know.

7 Q. Could it have been the year 2001?

8 A. Take a wild guess.

9 Q. Well, sir, I'm asking. Could it have been the  
10 year 2001?

11 A. I don't think so.

12 Q. How about the year after Tonya Hart's murder?  
13 Did you discuss the 9:52 arrival with your sister, Joy?

14 A. Like I said, I don't remember when we discussed  
15 it.

16 Q. Sir, is there anything else -- you've still got  
17 Plaintiff's 7 in front of you. Is there anything else  
18 from Deputy King's report that is inaccurate?

19 A. The description of my car is wrong. It was a  
20 1973 Subaru, not an '85.

21 Q. Okay. Now, sir, about the -- did you tell Deputy  
22 King that you had a 1985 Subaru?

23 A. I'm sure I told him it was a '73. I had three of  
24 them, so...

25 Q. But none of them were an '85, right?

439

1 A. No.

2 Q. None of them were even in the eighties, right?

3 A. No.

4 Q. Did you tell Deputy King anything that would  
5 suggest to him that the Subaru was a 1985?

6 A. I don't think so.

7 Q. Okay. Sir, is there anything else in that report  
8 by Deputy King that's inaccurate about you?

9 A. I'm getting there. Hang on.

10 Q. Take your time.

11 A. I think that's about it.

12 Q. Thank you, sir.

13 MR. WHITNEY: Your Honor, I'm done with  
14 Plaintiff's 7, if that may be retrieved from the  
15 witness.

16 BY MR. WHITNEY:

17 Q. Sir, right now you've got no exhibits before you;  
18 is that correct?

19 A. Correct.

20 Q. Now, I believe -- tell me if I'm misreading, but  
21 I believe that at the very start of Ms. Evans' redirect  
22 of you just a few minutes ago, you indicated that it was  
23 a police officer who gave you the impression that the  
24 fingerprints were important?

25 A. I said I believe so. It could have been.



440

1 Q. But, sir, that would have taken place before you  
2 went to the Sheriff's Office to give your written  
3 statement, right?

4 A. I don't remember where I heard it at. Everybody  
5 had their own theories. Everybody was talking about  
6 several things in this case on the streets, everywhere.  
7 I don't know.

8 Q. But you didn't have any interaction with law  
9 enforcement on the day before you went to the Sheriff's  
10 Office to give your statement, did you?

11 A. No.

12 Q. And you didn't have any interaction with law  
13 enforcement the morning of December 13th, 2001, did you?

14 A. No.

15 Q. So, you really didn't hear from a police officer  
16 that the footprints were important?

17 A. Could have heard it from a police officer. I  
18 think I do remember one of them saying something, but I  
19 don't remember when I heard it, so...

20 Q. But you can be sure it was after you made your  
21 own written statement, right?

22 A. Excuse me?

23 Q. You can be sure that if you heard it, it was  
24 after you made your own written statement on December --

25 A. No, I can't be sure.

441

1 Q. You can't -- but, sir, we've covered all of  
2 December 12th in exhaustive detail, haven't we?

3 A. Yep.

4 Q. And there are no interactions with cops, right?

5 A. Nope, none.

6 Q. So, you couldn't possibly have heard it from a  
7 cop on December 12th, 2001?

8 A. I don't remember if he said something to me about  
9 it while we were sitting there or what. I mean, prior  
10 to seeing -- meeting with the cops, no, no cop has told  
11 me up to that point. But after that, they might have.

12 Q. Now, correct me if I'm wrong, Mr. Thomas, but I  
13 understood your testimony to the prosecutor just a few  
14 minutes ago to mean that this information about the  
15 police thinking the footprints were important was part  
16 of your motivation for going to the Sheriff's Office to  
17 give your written statement in the first place?

18 A. Yeah. Like I said, could have heard it on the  
19 street. I don't know when I heard it.

20 Q. But you couldn't have heard it from a cop, right?

21 A. What's that?

22 Q. You could not have heard it from a cop?

23 A. I could have later on, on the 13th. I don't know  
24 when.

25 Q. But not as part of your motivation to go to the

442

1 Sheriff's Office and give your own written statement,  
2 right?

3 A. I guess.

4 Q. All right. Now, do you remember if anyone else  
5 that you can specifically recall told you on  
6 December 12th that the footprints through the snow might  
7 be important?

8 A. I don't know. Everybody had their theories.

9 Q. There's not a single person you can name?

10 A. My sister might have said something. Robin  
11 Ziegler might have said something. Jessica might have  
12 said something. I don't know. I just knew that I had a  
13 duty to go in and tell the police something that might  
14 be relevant in this case to help find the person that  
15 murdered Tonya Hart.

16 Whether I knew Tonya Hart or not, that -- that  
17 has no relevance to why I went in there. I went in  
18 there because I felt what I knew was the right thing to  
19 do and which, right now, sitting here, to this day, I  
20 regret even doing that, because it has drug me into a  
21 case that I want no part of, I want no involvement in.  
22 I've never had no involvement in this murder. And now  
23 I'm sitting here being talked to like you -- like you  
24 believe Dave's innocent and I had something to do with  
25 it.

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1 Q. But the day you went to the Sheriff's Office, you  
2 had the best of intentions, on December 13th, 2001?

3 A. That's all it was, was intentions to help out.

4 Q. And you did your best?

5 A. Whether I was accurate or not, that's up for you  
6 guys to determine, for the judge to determine.

7 Q. But you did do your best, didn't you?

8 A. Yeah.

9 Q. All right. I want to ask you a few questions  
10 about your testimony about Lacie Roach. Sir, you -- you  
11 admit, don't you, that you had an encounter with Lacie  
12 Roach in November of 2004?

13 A. That could have been the time. I don't remember  
14 exact dates.

15 Q. Do you remember it being cold out?

16 A. I just remember she owed me money and I kicked  
17 her car in because she owed me money.

18 Q. Do you remember the time of year?

19 A. I never told her I killed anybody, never told her  
20 anybody sitting and doing my jail time for me. Me and  
21 Lacie Roach never got along, nor did I care for her,  
22 okay. She knew about as much about this case as anybody  
23 else, considering she was a friend of my sister's. I'm  
24 sure Joy spoke to her about it on more than one  
25 occasion. Considering me and her did not get along, and

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1 I do not like her, do you think she's going to say  
 2 anything positive about me, try to cover her own ass  
 3 maybe for ripping someone off and not looking guilty  
 4 like she stole from somebody?  
 5 Q. But, sir, in -- the incident were you kicked in  
 6 her car, November 2004 could be accurate, couldn't it?  
 7 A. Could be.  
 8 Q. Sir, I believe when you were answering Ms. Evans'  
 9 questions, you denied making the statement that Lacie  
 10 Roach was one of the top three girls you would choose to  
 11 rape. Do I have that right, sir?  
 12 A. I would never make a statement like that.  
 13 Q. You never made -- you don't have a list of the  
 14 top three girls you would rape?  
 15 A. I despise predators and pedophiles and sex  
 16 offenders, okay. I would never ever go at a woman in a  
 17 way -- in that way ever. I've had some rough  
 18 relationships in my life. Me and my ex-wife, we didn't  
 19 get along for shit. Never once was there a violent hand  
 20 or inappropriate hand laid on her or towards her, okay.  
 21 So, get it out of your head that I even had -- said  
 22 anything like that to her.  
 23 Q. Did you tell Lacie Roach the words, Lacie, you  
 24 forget I'm not from Lewiston?  
 25 A. Nope.

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1 Q. Sir, how much money did -- strike that. Sir, at  
 2 any time, did you owe her money?  
 3 A. Hell no.  
 4 Q. You never owed her money?  
 5 A. Nope.  
 6 Q. Not -- not even \$70?  
 7 A. Nope.  
 8 Q. Did you ever try to frame your brother, George,  
 9 for this crime, the murder of Tonya Hart?  
 10 A. Excuse me? I didn't hear you. I don't  
 11 understand.  
 12 Q. At any time, sir, did you attempt to frame your  
 13 brother, George, for the murder of Tonya Hart?  
 14 A. Nope.  
 15 Q. Did you ever tell your brother, George, that you  
 16 had burned a pair of shoes?  
 17 A. Nope.  
 18 Q. Did you ever tell your brother, George, that you  
 19 had burned a sweatshirt?  
 20 A. No.  
 21 MR. WHITNEY: No other questions, Your  
 22 Honor.  
 23 THE COURT: Anything in light of that,  
 24 Ms. Evans?  
 25

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## REDIRECT EXAMINATION

1  
 2 BY MS. EVANS:  
 3 Q. Lane, is it fair to say that on the day that you  
 4 found out about Tonya's murder, in that time period,  
 5 that you talked to a number of people about their  
 6 theories about what had happened?  
 7 A. Yeah. Everybody was talking about it. Once word  
 8 got out that Tonya had been murdered, everybody was  
 9 talking about it.  
 10 Q. Is it possible that you learned about the  
 11 footprints from others in your group that were talking  
 12 about it?  
 13 A. Yeah, it's possible.  
 14 Q. Did Forrest Barnes seem to have a lot of  
 15 information?  
 16 A. I just remember we answered -- I answered the  
 17 door and he was crying. He just kept saying, Tonya is  
 18 dead. And for a couple minutes, I'm like, who the hell  
 19 is Tonya? I mean, I didn't know who she was. It didn't  
 20 click who she was. And then he said, Shorty's  
 21 girlfriend. And I was like, oh crap. And then he  
 22 wanted to go to Robin's house and tell Robin, because as  
 23 far as I know, Robin and Jesse both were really close  
 24 friends.  
 25 Q. And was Forrest, do you know, was he pretty good

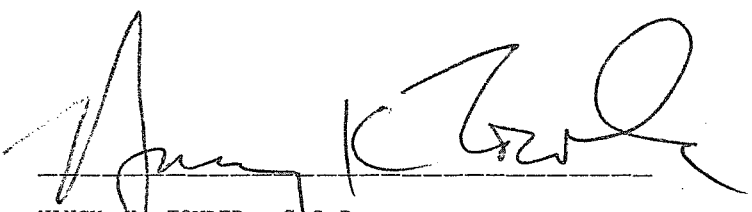
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1 friends with Tonya's sister, Heather's, husband at the  
 2 time, Josh?  
 3 A. They could have been, but I mean, Forrest was a  
 4 friend of mine, but he's not one of those friends that I  
 5 saw on a regular basis. I mean, so I really couldn't  
 6 tell you who Forrest knew or who he associated with.  
 7 Q. Okay. Thank you.  
 8 MS. EVANS: Thank you. I don't have any  
 9 further questions.  
 10 THE COURT: Sir, you may step down.  
 11 THE WITNESS: All right. Mr. Hart, I hope  
 12 you find peace when this is all over from your  
 13 daughter's death. It's absurd you have to go through  
 14 this again.  
 15 THE COURT: Why don't we go ahead and go off  
 16 the record. And would counsel approach, please?  
 17 (Side bar discussion held - not reported.)  
 18 THE COURT: Why don't we go back on the  
 19 record. Counsel, I had a brief opportunity to speak  
 20 with you about how we might conclude this evening.  
 21 Ms. Evans, you indicated there were a couple  
 22 of additional items you wanted to submit --  
 23 MS. EVANS: Yes, Your Honor.  
 24 THE COURT: -- for purposes of this hearing.  
 25 And it's my understanding, Mr. Whitney, that

## CERTIFICATE

I, Nancy K. Towler, C.S.R., certify that I reported in stenotype and thereafter transcribed into the foregoing record the excerpt of proceedings in the above-entitled cause, and that the said transcript is a full, true and correct copy of the above-entitled cause to the best of my ability, held in Moscow, Idaho, on January 27, 2011.

DATED this 20th day of January, 2012.



NANCY K. TOWLER, C.S.R.  
Certified Shorthand Reporter  
Second Judicial District  
of the State of Idaho  
IDAHO C.S.R. NO. 623